

PROSPECTUS

UNDER WHICH A CONCESSION CONTRACT WILL BE OPEN FOR COMPETITION
FOR THE OPERATION OF:

LODGING, FOOD SERVICE, MERCHANDISE, AND BOAT TOURS
WITHIN
CRATER LAKE NATIONAL PARK

PROSPECTUS ISSUED: June 28, 2001

OFFERS AND ANY MODIFICATIONS OF THEM MUST BE RECEIVED BY
THE NATIONAL PARK SERVICE

NO LATER THAN October 10, 2001 AT 4:00P.M.

AT

NATIONAL PARK SERVICE
OFFICE OF CONCESSION PROGRAM MANAGEMENT
600 HARRISON STREET, SUITE 145
SAN FRANCISCO, CALIFORNIA 94107-1372
(415) 427-1369

Address questions by mail to:

Mr. Chuck Lundy
Superintendent, Crater Lake National Park
P.O. Box 7
Crater Lake, Oregon 97604

telephone inquiries to:

Mr. John Miele
Management Assistant
Crater Lake National Park
(541) 594-2211, Press #2, Ext.102

Information for site visits can be scheduled for the viewing of the facilities by calling the
above phone number (541) 594-2211, when answered Press #2, then dial Ext.102.

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

DOCUMENT PRINTED
ON RECYCLED PAPER

SUMMARY OF BUSINESS OPPORTUNITY
Concession Contract CC-CRLA001-02
Crater Lake National Park

Nature of business and services provided: This business opportunity is for the privilege of providing commercial visitor services at Crater Lake National Park. Authorized services include lodging, food services, campground, gasoline service, retail merchandise, employee housing, and boat tour services. Most of the services are provided on a seasonal basis; there are limited food service and gift store operations during the winter.

Operating locations: There are three site locations within the park where commercial services are provided: Rim Village and Cleetwood, located on the edge of Crater Lake, and Mazama Village. Mazama Village is located 7 miles from Crater Lake near the park entrance at Annie Spring, 56 miles from Klamath Falls and 76 miles from Medford. Rim Village and Cleetwood are about 15 miles apart on opposite ends of Crater Lake.

Annual gross receipts:

<u>1998</u>	<u>1999</u>	<u>2000</u>
\$5,818,684	\$6,160,775	\$6,884,948

Annual park visitation:

<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
542,611	526,557	501,148	521,465	481,550	476,483

Number of employees at seasonal peak: Approximately 240.

Estimate of compensation due existing concessioner from incoming concessioner:

Possessory Interest \$2,650,000 Personal property \$770,000

Estimate of capital investment required during new contract: Not less than \$1,540,000 will be required during the first 6 years of the new contract for construction of a new restaurant/gift store.

Length of new contract: 15 years.

Existing concessioner: Crater Lake Lodge, Inc., This concessioner has no statutory right of preference to the award of a new contract as provided for in PL105-391. This solicitation for commercial services is fully competitive.

This summary is provided as a ready reference of key points for interested parties. It does not modify the Prospectus. The business opportunity is described in the Prospectus.

LIST OF CONTENTS

LIST OF CONTENTS

BUSINESS OPPORTUNITY

THE PARK AREA AND ITS MISSION

CONTRACT

PROPOSAL

APPENDIX

1. National Park Service Concession Management
2. The Concession Policy Act, Public Law 105-391
3. Concession Management Regulations, 36 CFR Part 51
4. Concessioner Visitation Statistical Data
 - a.) Mazama Motor Inn Occupancy 1997-99
 - b.) Crater Lake Lodge Occupancy 1997-99
 - c.) Campground Occupancy 1997-99
 - d.) Tour Boat Occupancy 1997-99
5. Existing Contract
6. Existing Risk Management Plan
7. Approved Rates Currently Being Charged
8. Visitor Services Plan (Crater Lake National Park)

***BUSINESS
OPPORTUNITY***

BUSINESS OPPORTUNITY

INTRODUCTION

This document describes in general terms the existing business and the business opportunity for all the facilities and services to be authorized by the National Park Service located in Crater Lake National Park. Potential offerors are responsible for reviewing all sections of this prospectus and, specifically, the terms and conditions of the attached contract, including its exhibits, to determine the full scope of a concessioner's responsibilities under the new contract. This solicitation is being conducted in accordance with the National Park Service Concessions Management Improvement Act of 1998 (PL 105-391).

Crater Lake National Park is in southwest Oregon in the south-central portion of the Cascade Mountain Range. The Crater Lake caldera contains the deepest lake in the United States and is world famous for its clarity and the intense blue color of its water. On sunny, summer days, neither words nor photographs can adequately capture Crater Lake's remarkable blueness. In addition, appearance of the lake is constantly changing. This constant change is one of the outstanding features of the lake and a reason that many people visit Crater Lake as often as they can. The concession operator has the privilege to provide park visitors with food services, overnight accommodations, gift and souvenir sales and boat tours on Crater Lake.

The present commercial operation at Crater Lake National Park operates from three locations within the park, which are Rim Village, Mazama Village and Cleetwood.

1. Rim Village at an elevation of 7,100 feet on the south edge of Crater Lake, located on the caldera rim, features summer season lodging (71 rooms) and sit-down dining at the historic Crater Lake Lodge, rehabilitated five years ago by the National Park Service. At a separate location within walking distance from the historic lodge is the cafeteria building that has additional food service and a gift and souvenir sales operation.
2. Mazama Village, seven miles south from Rim Village, contains 40 motel units, convenience store, shower and laundry facilities, gasoline station and 213 site Mazama Campground. Adjacent to the Mazama Village is the Mazama Dormitory complex housing concession employees.
3. Cleetwood, about 15 miles from Rim Village, is the beginning point for the seasonal boat tours during the summer season.

Summer has traditionally been the peak season of operations at Crater Lake. There are an average of one-half million visitors to the park each year; about three-quarters of these visit the park during the summer months from June through September. Depending upon snow conditions, May and October usually offer an opportunity to expand shoulder season services. Occupancy figures for overnight lodging, campground, and boat tours for 1995 through 1999 are included in the appendix.

On the average, 240 personnel are employed during the peak-operating season to provide the necessary staffing to operate required services for the visitors.

During the winter months, heavy snow and lower visitation cause most facilities and services to close. The cafeteria building at Rim Village is kept open daily during daylight hours, offering reduced food service and souvenir sales. On an average basis, the first snow usually occurs in October, and snow stays on the ground into June.

The Existing Contract

The existing contract, as extended, expires on October 31, 2001. The existing concessioner is Crater Lake Lodge, Inc. The National Park Service has determined, in accordance with 36 CFR Part 51, that the new concession contract is not a qualified concession contract as the anticipated annual gross receipts are expected to exceed \$500,000 in the first 12 months of the new concession contract. A preferred offeror does not exist for purposes of the exercise of a right of preference to the award of a new concession contract. This solicitation for a new contract is fully competitive as provided for in PL 105-391. All interested parties must apply and must submit a responsive proposal in response to this prospectus.

Basic Financial Information

Basic financial information is included below. When reviewing the financial history of the existing operation, it must be pointed out that the 1998 Visitor Services Plan (see appendix) calls for modifications in commercial services to better serve visitors. Currently the majority of the operation's income is derived from food services, overnight lodging, and gift/souvenir sales. It is anticipated that full implementation of the Visitor Services Plan may affect the concessioner's volume of sales primarily in food service, gift/souvenir sales and boat tours.

The proposal package requires offerors to develop financial projections based upon the business to be operated and the projects required. Offerors should be appropriately cautious in the use of historical information. The National Park Service will not provide financial predictions; therefore, offerors are responsible for producing their own pro forma financial statements and relying upon their own financial predictions.

The following financial information is provided in accordance with 36 CFR Part 51:

GROSS RECEIPTS BY DEPARTMENTS

CATEGORY	1998	1999	2000
Lodging	\$1,712,684	\$1,759,136	\$1,875,824
Food	1,330,054	1,382,994	1,577,804
Alcoholic Beverages	155,791	154,130	182,116
Souvenirs	1,966,175	1,969,163	2,123,823
Merchandise	341,530	328,536	391,896
Auto Service	124,405	152,566	159,731
Transportation (boat tour)	0	214,591	351,121
Cigarettes	7,966	9,234	9,646
Campground	153,317	164,889	185,533
Wood	18,965	18,836	16,810
Showers/ Laundry	7,835	12,642	10,643

NOTE: In 1998 there were no boat tours as a result of construction on the installation of a new fuel storage and delivery system.

FRANCHISE FEES

The franchise fee over the last 3 recent years has been 0%.

MERCHANDISE INVENTORIES

1998	1999	2000
\$280,056	\$266,144	\$227,671

DEPRECIABLE FIXED ASSETS

1998	1999	2000
\$4,836,490	\$5,144,383	\$5,250,030

NET DEPRECIABLE FIXED ASSETS

1998	1999	2000
\$2,277,852	\$2,321,619	\$2,139,611

THE BUSINESS TO BE OPERATED

Future Operations

The 1998 Visitor Services Plan sets the direction for this proposed 15-year contract. Levels and kinds of commercial visitor services as well as proposed facility developments are set forth in this plan. When the Visitor Services Plan is fully implemented, future business operations will be significantly changed from current operations.

At Rim Village the cafeteria building will be converted to its historic configuration and external appearance, and provide a deli-style food service and limited sundry and gift sales related to Crater Lake. The area for the food service (cafeteria) will be reduced from 4,500 square feet to 1,800 square feet; the area for gift/souvenir/sundry sales will be reduced from 6,500 square feet to 1,700 square feet. During summer, sit-down dining and overnight accommodations will continue to be provided at the historic Crater Lake Lodge.

Mazama Village will become the focal point for most commercial visitor services. A new full-service restaurant will replace the Watchman Restaurant at Rim Village. The new restaurant building will include space for gift/souvenir sales, and retail merchandise space will be expanded at the Mazama Village Store by eliminating the coin-operated laundry. This will partially offset the reduction of retail merchandise space at Rim Village. The public showers and gasoline station will remain in their present location.

The 40 unit Mazama Village Motor Inn will continue to provide summer season overnight lodging. Overnight camping will continue at the 213 site Mazama Campground.

The Mazama Dormitory complex provides housing for approximately 70 employees, plus 10 recreational vehicle sites. In the shoulder season (March, April/October, November) the concessioner is expected to provide lodging for educational groups in the Mazama Dormitory. Within the same area of the dorm complex the National Park Service plans to construct a small concession maintenance facility to support the concession operation. This is to offset the removal of the maintenance shop and work area adjacent to the rim cafeteria building as a result of the historic restoration of the building.

The National Park Service plans to remove the 76-bed Rim Dormitory and restore the site to its natural setting. Additionally the National Park Service plans to develop replacement housing for concession employees displaced by the removal of the Rim Dormitory. The National Park Service would not remove the Rim Dormitory until such time as replacement housing is available and ready for occupancy.

The frequency of boat tours at Cleetwood will be reduced from nine tours to seven per day, and an eighth tour will be provided when necessary to pick up visitors at Wizard Island. The concessioner will develop a reservation system for boat tours for the convenience of visitors who want to take the boat tour. The primary ticket sales office for boat tours will be located at the rim near the Cleetwood trailhead/parking area. The implementation of a reservation system will be required within the first two years of operation. With the implementation of the reservation system, ticket sales could also take place at other concession locations or by mail. The sale of limited snacks, beverages and other merchandise items directly connected to the needs of boat tour participants will be permitted.

Environmental Management

The new concessioner will develop, document, implement, and comply fully with a comprehensive written Environmental Management Program (EMP) to achieve environmental management objectives. The initial EMP shall be developed and submitted to the Director for approval within sixty (60) days of the effective date of the contract. A proposed updated EMP will be submitted for approval annually. (See Contract, Section 6.)

The annual EMP will describe how the concessioner will comply with the EMP and how the concessioner will self-assess its performance under the EMP. The self-assessment should ensure the concessioner's conformance with the environmental management objectives and measure performance against environmental goals and targets. The EMP shall also describe procedures to be taken by the concessioner to correct any deficiencies identified by the self-assessment.

Concession Facilities

The following concession facilities will be assigned to the concessioner

A. Crater Lake Lodge, including furniture.

The historic Crater Lake Lodge has been fully rehabilitated (1995) and is in excellent condition. For the complete listing of furniture, see Exhibit C of the Contract.

B. Food Service Building, Rim Village

The existing cafeteria building is to be rehabilitated by the National Park Service, subject to the availability of appropriated funds, to its historic configuration and external appearance. Upon completion of the rehabilitation, the area available for food service operations and retail sales will be approximately 3,500 square feet (currently 10,000 square feet). As part of this rehabilitation project, the National Park Service plans to construct a basement underneath the building, which could be used for refrigeration equipment and storage. The concessioner will be expected to provide the fixtures, furnishings, equipment, interior finishes, and interior remodeling of the building.

C. Gasoline Delivery System at Cleetwood

The National Park Service replaced the entire gasoline delivery system for the tour boats in 1998. The new fuel system includes gasoline storage tanks, fuel lines, and dockside dispensing system.

D. Docks at Cleetwood Cove and Wizard Island

The docks used for embarking and disembarking of tour boat passengers are located at Cleetwood Cove and Wizard Island. The two docks are in poor condition and are reaching the end of their useful life. The National Park Service will replace the docks subject to the availability of appropriated funds.

E. Mazama Village

This operation contains a 40 motel units, convenience store, public showers and laundry facilities, and gasoline sales. The gasoline underground storage tank for the service station was replaced with a new 15,000-gallon storage tank in 1990 to comply with all state and federal requirements for underground storage tanks. In addition, the fuel delivery system was replaced to comply with all federal and

state requirements. The soil at the site tested clean. Underground storage tank closure permit is available at the park.

F. Mazama Campground

Mazama Campground facilities include 7 comfort stations, a trailer dump station, registration kiosk, bulletin boards, site markers, bear proof trash receptacles with cans, and other miscellaneous items. The campground contains 213 campsites, each with picnic table and grill.

Most of the facilities are in fair to good condition. The comfort stations are in poor condition. The National Park Service will replace the comfort stations, subject to the availability of appropriated funds.

G. Mazama Dormitory

The Mazama Dormitory complex contains housing for 70 employees plus 10 recreational vehicle sites. The complex consists of three buildings; 1) a year-round dormitory and an unfinished food service facility, 2) a satellite seasonal dormitory, 3) a utility building that includes covered parking and an emergency generator. The Mazama Dormitory, constructed by the National Park Service, was completed in the fall of 1998 and first assigned to the concessioner in the spring of 1999. It is the intention of the National Park Service, subject to the availability of appropriated funds, to complete the build-out of the food service facility.

H. Rim Dormitory

The National Park Service plans to remove the Rim Dormitory and restore the site to its natural condition. The dormitory will be removed after replacement housing has been developed by the National Park Service. Pending replacement, the Rim Dormitory will be assigned to the concessioner.

Concession Facilities Improvement Program

Section 9 of the new contract will require the concessioner to undertake an improvement and building program costing not less than \$1,540,000 for the construction of a new restaurant/gift store at Mazama Village. The improvement project must be completed within the first six years of the new contract. The specified project is identified in the contract including completion date and required expenditures.

Mazama Village Development

◆ Construct New Restaurant Facility

The estimate prepared by the National Park Service is a "Class C" conceptual cost estimate based on square foot costs of similar construction, or on identifiable known unit cost of similar construction item. Class C estimates are usually prepared before a fully defined scope of work has been developed. It considers such factor as job location, unusual site conditions, sources of materials and supplies, and the availability and skills of local labor pools. Class C estimates are use to establish a logical expectation of costs associate with a future project by assessing the known cost of similar past projects. The offeror should make its own determination as to the probable cost of implementing the construction requirements as identified in Section 9 of the new contract.

Utilities

The park provides water and sewer service year-round. The park also provides trash removal service from a central location during the winter months when private service is not available. (The concessioner is responsible for hauling trash to the central location during the months the trash service is not available.) During the summer the concessioner shall contract with a local provider for trash removal.

Private utility and communication companies provide electric power and telephone services directly to the concessioner.

The rates for services provided by the park during the year 2000 operating period were:

Water:	<u>\$.0358</u>	per cubic foot
Sewer:	<u>\$.0286</u>	per cubic foot
Trash Removal:	<u>\$.64</u>	per bag

These services are provided on a reimbursable basis and shall be billed monthly to the concessioner. Rates for park provided utilities and services will be based on operating costs or comparability, whichever is greater. In the event actual costs exceed comparability, the amount of the difference may be passed on to the visitor through the rate approval process.

Telecommunications Equipment

The concessioner will be using telephone equipment provided by the park at two locations within the park. Located at the Crater Lodge is a Northern Telecom Option 11 PBX switch and at the Mazama Dorm is Northern Telecom Auxiliary/Remote equipment. The concessioner will be required to have a maintenance contract with a certified authorized dealer of Northern Telecom products, i. e. (U. S. Sprint) for the maintenance and upkeep of the equipment at both locations.

Term and Effective Date of New Contract

The new contract will be for a term of fifteen (15) years from the effective date of the contract. The effective date of the contract (as established the National Park Service) will be after a determination of the value of possessory interest and other compensation due the existing concessioner under the terms of the existing contract. The new contract will be awarded when both the Director and the selected offeror have fully executed the contract.

The National Park Service will provide for the continuation of the applicable visitor services in the park through exercise of its rights and authorities under the existing concession contract and/or 36 CFR Part 51 until the effective date of the new concession contract.

Franchise Fee

The minimum franchise fee for the new contract is three percent (3%) of annual gross receipts as defined in Section 2(i) of the new concession contract. However, offerors may propose a higher minimum franchise fee or an alternative minimum franchise fee in accordance with the terms of the prospectus.

Repair and Maintenance Reserve

A Repair and Maintenance Reserve is included in the new contract. Pursuant to the new contract, the concessioner would be required to establish and manage this Reserve, as part of its accounting system, in the amount of one percent (1%) of its gross receipts. Funds in this Reserve will be used for projects in accordance with Section 10 and Exhibits F and H of the new contract for repair and maintenance of concession facilities.

PERSONAL PROPERTY AND POSSESSORY INTEREST PURCHASE FROM EXISTING CONCESSIONER

The existing concessioner has under the terms of its existing contract, certain rights to monetary compensation in the event it is not selected as the new concessioner for the new concession contract.

The compensation relates to possessory interest in real property improvements and to personal property of the existing concessioner, or both. The provisions of the existing contract in this regard are included in the Appendix to this Prospectus.

It is the obligation of any offeror that is selected as the new concessioner to pay the compensation due the existing concessioner under the terms of the existing contract and 36 CFR Part 51 for personal property and possessory interest.

Personal Property

Any offeror that is selected as the new concessioner is obliged to purchase certain personal property (equipment and merchandise and supplies) of the existing concessioner as described in the provisions of the existing contract included in the Appendix. Offerors are solely responsible for ascertaining the personal property that must be purchased and its condition. The purchase price of this property must be estimated by the offeror. The fact that the final purchase price may be greater than estimated by an offeror will not be grounds for adjustment of the terms of the contract or other relief to the new concessioner.

Possessory Interest

Any offeror that is selected as the new concessioner is obliged to pay compensation (possessory interest compensation) to the existing concessioner for real property improvements the concessioner made or acquired under the terms of the existing contract. Such compensation is described in provisions of the existing concession contract included in the Appendix.

Estimates of Value

The value of the existing concessioner's personal property and equipment, as estimated by National Park Service May 2001, is \$770,000. The value of the existing concessioner's merchandise and supplies (inventory), as estimated by National Park Service, is \$233,363. The value of the existing concessioner's possessory interest, as estimated by National Park Service, is \$2,580,547.

These estimates are not binding on the existing concessioner. Actual values will be determined through negotiation with the existing concessioner or the value determination process (similar to binding arbitration) that is required by the terms of the existing concession contract.

Offerors may not rely on the National Park Service estimates in preparing and submitting proposals in response to this prospectus. It is the responsibility of offerors to make their own estimates of the compensation that must be paid the existing concessioner under the terms of the existing concession contract.

In the event that the determined possessory interest value exceeds the National Park Service estimated value, the new concessioner may choose to pay the possessory interest value and other compensation due the existing concessioner, or the new concessioner may choose to terminate the concession contract, without liability to the new concessioner or National Park Service. If the new concession contract is terminated by the new concessioner, National Park Service will take the appropriate steps to assure that the existing concessioner receives payment for possessory interest and other compensation due under the terms of the existing concession contract.

SITE VISIT

The park conducted a complete walk through of the concession facilities in September of 2000. Applicants are strongly urged to visit Crater Lake National Park and see the concession facilities first hand. Due to the heavy winter snow pack generally experienced by the park in winter months the concession facilities may not be available to thoroughly view. Inquires should be made prior to visiting the park on the snow conditions and the availability of the concession facilities. Information given out during the September 2000 walk through of the concession facilities is available to interested parties upon request. To obtain this information please contact the persons listed on the inside cover of this Prospectus.

PARK AND ITS MISSION

THE PARK AREA AND ITS MISSION

DESCRIPTION OF PARK

Park Location and Access

Crater Lake National Park is in south-central Oregon near the southern end of the Cascade Range. It lies in an area with a long history of volcanic and glacial activity extending from Lassen Peak in northern California northward into Canada. Crater Lake occupies the collapsed caldera of the once lofty Mount Mazama.

Crater Lake is 4.5 to 6.0 miles across, has 26 miles of shoreline, a surface area of 21.5 square miles, and, with a depth of 1,932 feet, is the deepest lake in the United States. It is known for the clarity of its waters and its intense blue color.

The park entrance at Annie Spring is 76 miles from Medford and 56 miles from Klamath Falls and can be reached by Oregon Highway 62, which is kept open year-round. The park can also be reached from the north by Oregon Highway 138 during the summer months. Park roads lead from intersections with the above highways into the park where they meet the 33-mile Rim Drive encircling the lake. Winter access is maintained only from the south and west on Oregon Highway 62 through the Munson Valley headquarters area and up to the Rim Village area. Road closures, particularly between headquarters and the rim, are common during the winter.

PURPOSE AND SIGNIFICANCE OF PARK

Crater Lake with its encircling walls is a splendid example of a caldera lake preserved in its natural surroundings. The effort to establish Crater Lake as a national park started as early as 1885, when William Gladstone Steel walked 20 miles from Fort Klamath to Crater Lake, arriving at the caldera rim on August 15. As he viewed the lake for the first time, he experienced "an overmastering conviction that this wonderful spot must be saved, wild and beautiful for all future generations." Steel subsequently mounted a campaign to preserve Crater Lake as a national park. In early 1886, Oregon's representatives in Congress introduced legislation to set aside Crater Lake and the surrounding land as a

national park. On February 1, 1886, President Grover Cleveland issued an executive order withdrawing from settlement or sale the land surrounding and including Crater Lake. The withdrawal was made in anticipation of legislation for the purpose of establishing Crater Lake as a national park.

Lumber, sheep, and ranching interests opposed a public park at Crater Lake, and a number of attempts were necessary before proposed legislation was enacted by Congress. In 1891, Congress passed, and President Benjamin Harrison signed into law, the Forest Reserve Act which gave the President authority to set aside public lands as forest reserves by public proclamation. In the following year the Oregon Alpine Club petitioned the Federal Government for the establishment of a forest reserve along the Cascade Range in Oregon. The Oregon Legislature adopted a memorial to the President supporting the forest reserve. On September 28, 1893, President Grover Cleveland issued a proclamation establishing the Cascade Range Forest Reserve which embraced virtually the entire Cascade Range and which also included Crater Lake and the surrounding land area. Subsequently, on May 22, 1902, President Theodore Roosevelt signed into law the act that established Crater Lake as the nation's fifth national park.

Park Purpose

Crater Lake National Park is a tract of land encompassing 183,224 acres "dedicated and set apart forever as a public park or pleasure ground for the benefit and enjoyment of the people of the United States" (16 USC 121). The act that established the park required that adequate measures be taken for the "preservation of the natural objects, the protection of the timber, the preservation of all kinds of game and fish." It required that the park be available, under such regulations as the Department of the Interior may prescribe, for use by "scientists, excursionists, and pleasure seekers," and established that restaurant and hotel keepers could accommodate visitors "at places and under regulations fixed by the Secretary of the Interior, and not otherwise."

Park Significance

Although visitor services are authorized, the type and level of such services are further determined by what makes Crater Lake National Park significant to visitors. Crater Lake is one of the most famous lakes on earth, principally because of the beauty imparted by its large size, blue color, and mountain setting. The lake is almost always different from the way it appeared before, whether the time that has elapsed is measured by minutes, hours, days, months, seasons, or years. This constant change is one of the outstanding features of

the lake and the reason that many people take every opportunity to visit it frequently and at every season of the year. People also delight in conducting their guests, relatives, or friends to the park, knowing it will be an experience they will never forget.

The “crater” in which Crater Lake is located is a caldera that was formed more than 7,700 years ago when the top of the approximately 12,000 foot volcano, Mount Mazama, collapsed. The roughly circular lake, which formed in the caldera primarily from snow melt and rain, is about 6 miles across at its widest point and covers an area of some 21 square miles. Scientists consider Crater Lake and its surroundings a model for how small calderas evolve in geologic time. This deep, pure, stable caldera lake is fully encircled by nearly 26 miles of colorful lava cliffs that rise from 500 to 2,000 feet above the surface of the water. At a depth of 1,932 feet, Crater Lake is the deepest water body in the United States and the seventh deepest lake in the world. Crater Lake holds the world record for clarity among deep lakes and has been the object of scientific study for more than a century. The lake is unique for the scientific research related to the pristine lake waters, associated geothermal activities, and unusual aquatic organisms.

The mature forests that surround Crater Lake are largely preserved in their pristine condition. Most have never been logged, and they harbor a variety of plant and animal life characteristic of higher elevations in the Cascade Range. Because extensive alteration of forest land has taken place elsewhere in the range, some of the associated flora and fauna are rare, making the park’s relatively unmodified habitats of value as a refuge.

Some of the nation’s best examples of blending rustic architecture and other built features within a national park setting can be seen at Rim Village, park headquarters, and along Rim Drive. This designed landscape was constructed over a 15-year period beginning in 1926. Most of its features are listed on the National Register of Historic Places.

PARK MANAGEMENT OBJECTIVES FOR CONCESSION SERVICES

The National Park Service faces a tremendous challenge at Crater Lake: to minimize the impacts on the park's natural and cultural resources while providing for visitors' enjoyment of the park. This is especially acute in developed areas where visitors concentrate and where the kind and level of services available often dictate how much impact there will be on park resources. Park management objectives for concession services are:

- ◆ Minimize the impact of commercial visitor services.
- ◆ Provide at Rim Village only those commercial visitor services essential for visitor enjoyment of Crater Lake.
- ◆ Locate facilities and services in areas where the least impact on park resources and values will occur.
- ◆ Relieve congestion in Rim Village.
- ◆ Make available necessary and appropriate commercial visitor services to meet the needs of visitors and enhance their enjoyment of the park.

The concession contract requires the concessioner to provide lodging services, food services, retail merchandising, gasoline sales, campground, employee housing and boat tour operations. All of these commercial services are essential to meet visitors' needs and enhance their enjoyment of Crater Lake. The concessioner plays a key role in providing visitors with a quality park experience.

Historic Crater Lake Lodge first opened to the visiting public in June 1915. Since then, lodge guests have enjoyed a unique experience at Crater Lake; the lodge has become part of the cultural landscape. Under the Visitor Services Plan, fine dining and overnight accommodations will continue at Crater Lake Lodge. In providing hospitality services at the recently rehabilitated lodge, the concession operator adds another dimension to guests' appreciation of the splendor of Crater Lake.

Rim Village has historically been the focal point for visitor services at Crater Lake National Park. As the number of visitors and the commercial facilities and services have grown over the past forty years, congestion at Rim Village has worsened to the point that it interferes with visitor enjoyment of Crater Lake. The Visitor Services Plan eliminates unnecessary commercial services from Rim Village while continuing those services essential for visitor enjoyment of Crater Lake. A deli-style food service will offer good quality, limited menu food service to serve visitors' needs. Likewise the retail operation at Rim Village will offer a

limited inventory of gifts, souvenirs and sundries to meet visitor needs. The sale of gifts and souvenirs related to Crater Lake provides visitors with a tangible memento of their park experience. It is envisioned that the new food service/retail facility will be an efficient, high volume operation where individual visitors will spend a minimal amount of time.

Under the Visitor Services Plan, Mazama Village would become the focal point for most visitor services. Staying overnight at Crater Lake allows visitors more time to gain a fuller appreciation of the park's features and natural values. The 213 site Mazama Campground offers the outdoor camping experience traditionally associated with national parks. The 40 unit Mazama Village Motor Inn offers modern, comfortable accommodations that many visitors have come to expect. A new full service restaurant near the motel and campground will replace the old Watchman Restaurant at Rim Village. Locating a new restaurant at Mazama Village will be more convenient for the over 500 overnight guests staying at the motor inn and campground. Retail merchandise space for gift sales and camper supplies will be expanded at Mazama Village

Interpretive boat tours on Crater Lake offer a rich experience to those visitors who venture out to Cleetwood and hike down the trail to the lake. Interpretation for each boat tour is provided by the National Park Service. This is an opportunity for visitors to view Crater Lake and the caldera from a unique perspective and gain an intimate experience of Crater Lake not available to persons who stay on the caldera rim. The seven tour per day boat tour operation will increase efficiency, lessen impacts on Crater Lake, and reduce parking problems during peak hours. The new facilities to be built by the National Park Service both at the Cleetwood trailhead/parking area and at the lakeside dock area will better serve visitors who want to take the boat tour.

Commercial visitor services provided under the concession program are intended to augment services provided by the National Park Service and to further park management objectives.

Compliance with Federal, State, and Local Laws and Park Jurisdiction

The United States has exclusive jurisdiction within all areas of Crater Lake National Park. National Park rangers enforce federal and assimilated state laws within the park. Consequently, the concessioner operates in a somewhat different regulatory environment than businesses operating outside the park.

In matters of routine business the concessioner should expect to operate in the same manner as if the business were outside federal jurisdiction. As an example, the concessioner is required to have gasoline pumps calibrated by the State of Oregon.

All taxes due must be paid in accordance with federal and state laws. The concessioner is obligated to collect the Klamath County room tax. The concessioner must comply with all standards established pursuant to federal and State of Oregon labor laws, such as those concerning minimum wages, child labor, hours of work, and safety (36 CFR 8.4). The sale of alcoholic beverages must conform to all applicable Federal, State, and local laws and regulations including, without limitation, 36 CFR 5.2(a), but the concessioner is not required to obtain a liquor license from the State of Oregon.

The federal government has granted authority to the State of Oregon to regulate air and water quality, wastewater, underground storage tanks, hazardous wastes, and solid waste disposal even within areas of exclusive jurisdiction. The Oregon Department of Environmental Quality regulations and oversight apply at Crater Lake National Park.

The concessioner is required to submit all construction plans for buildings and other facilities to the National Park Service for approval. Building permits are issued by the Park Superintendent in the form of approval to proceed. The concessioner is required to follow applicable codes such as the Uniform Building Code, National Electric Code, and the National Fire Code.

United States Public Health Service sanitarians conduct food sanitation inspections in accordance with the 1999 USPHS/FDA Food Code. The State of Oregon and the county health departments have no jurisdiction and no authority to conduct public health inspections at Crater Lake National Park. Plans for food service facilities will require approval of the National Park Service in consultation with the US Public Health Service.

Park Management Structure

The Superintendent is responsible for the total park operations, including the concession operation. The Superintendent has the responsibility to carry out the policies and directives of the National Park Service, including contract management of the concessioner. Directly, or through designated representatives, the Superintendent reviews, directs, and coordinates the concessioner's activities within and as they relate to Crater Lake National Park. This includes inspection of facilities, approval of rates charged for all commercial services, evaluation of concessioner services and facilities, and approval of construction and all improvements to facilities. The Management Assistant assists the Superintendent and has direct delegated responsibility for the concession program at Crater Lake National Park. Specific responsibilities of key staff members are further described in the concession contract under the Operations Plan (Exhibit B).

Natural Resource Management Issues

The natural resource management policies of the National Park Service provide the American people with the opportunity to enjoy and benefit from natural environments minimally influenced by human actions. The natural resources and values that the National Park Service protects include plants, wildlife, air and water quality, geologic features, and aesthetic values such as scenic vistas, pristine lakes, and clear night skies. The National Park Service expects its concessioners to join with the park service in fulfillment of its mission, and to give special attention in their operations to the preservation, conservation, and protection of park resources and the environment.

Interactions between black bears and park visitors are a significant resource management issue. Most problems with bears are caused by the availability of human food items, including garbage. The availability of human food has resulted in property damage and personal injuries. The concessioner is obligated to work cooperatively with the National Park Service in informing the public and taking steps in the campground and other concession facilities to minimize encounters with bears. For example, park regulations require that all food items must be stored in bear proof containers and disposed of in bear proof trash receptacles. Through the National Park Service and the concessioner working together to achieve compliance, campground guests can enjoy a safe camping experience and bears can prosper in their natural environment away from the campground.

Solid waste is a major environmental issue. As a federal conservation agency, as well as a concerned and responsible member of the community, the National Park Service requires the concessioner to establish a recycling program, reduce the generation of nonbiodegradable solid waste, and find alternatives to nonbiodegradable packaging materials.

The pristine character of Crater Lake cannot be jeopardized in any way. The possibility of petroleum leakage or spills into the lake or on the shore, relative to the concession tour boat operation, is of serious concern. It is imperative that the concessioner operates the tour vessels and the fueling system in accordance with environmental regulations and standards in order to avoid petroleum leakage and spills. Additionally, the concessioner is required to develop and implement a Fuel Spill Contingency Plan.

Park Interpretive Themes and Goals

The primary mission of Crater Lake National Park is to protect and preserve the natural features and resources for which the park was established. The goals of interpretation are to offer a high quality visitor experience and support the park mission by fostering an understanding and appreciation of the park's natural and cultural values.

Interpretive themes, which have been established for Crater Lake National Park, are:

1. Geologic forces, primarily volcanism, created the Cascade Mountains and Mt. Mazama of which the Crater Lake caldera is a part. This theme includes the following topics:

- ◆ glaciation
- ◆ eruption and collapse of Mt. Mazama
- ◆ formation of Crater Lake
- ◆ geothermal activity
- ◆ plate tectonics

2. Scientists and the National Park Service are studying Crater Lake to gain a better understanding of the lake's natural systems and to aid in future management of the lake and surrounding resources. This theme includes the following topics:

- ◆ water clarity
- ◆ water quality
- ◆ water chemistry
- ◆ hydrothermal activity
- ◆ lake limnology
- ◆ lake ecology
- ◆ water color

3. Humans have played a significant role in the discovery, preservation, and management of Crater Lake. This theme includes the following topics:

- ◆ Native American legends about Crater Lake
- ◆ Native American use of the Crater Lake area
- ◆ discovery of Crater Lake by Europeans
- ◆ establishment of Crater Lake as a national park
- ◆ Crater Lake and the national park movement
- ◆ National Park Service philosophy
- ◆ rustic architecture

4. Crater Lake National Park is home to a diversity of plants and animals including several endangered species. This theme includes the following topics:

- ◆ plant life
- ◆ animal life
- ◆ endangered species
- ◆ bio-diversity
- ◆ role of fire in the ecosystem
- ◆ old growth forest ecology
- ◆ weather and climate in relation to above

5. Park Experience

- ◆ enjoying the special features of Crater Lake National Park
- ◆ activities at Crater Lake
- ◆ “how to do” materials that relate to park activities
- ◆ park informational material

6. Wilderness

- ◆ the concept of wilderness
- ◆ history of the wilderness idea, its implementation nationwide and at Crater Lake.
- ◆ human uses of wilderness (human values, scientific values, forms of exploitation and their consequences)
- ◆ wilderness appreciation

7. Environmental Topics

- ◆ general topics/issues of importance to all parks, i.e. air quality, water quality, waste disposal
- ◆ relationship between parks and their environs, role of parks as indicators of this relationship
- ◆ the national park movement
- ◆ the conservation/environmental movement
- ◆ environmental ethics

Gift Store Mission Statement

Gift stores at Crater Lake National Park serve a two-fold mission, to: 1) Provide opportunities for visitors to purchase mementos of their park visit and, 2) Serve as an extension of the park's interpretive responsibilities to the visiting public. Gift stores provide a means for visitors to take home something tangible from their park experience. Therefore, gifts and souvenirs should be related to the park's features, natural values, and interpretive themes. Purchases have the potential of both providing memories of an enjoyable experience and further contributing to the appreciation of the park's natural and cultural resources.

Concessioner sales of gifts and souvenirs should support park interpretive themes and goals and adhere to the following guidelines:

1. The image of the park and the gift stores are intertwined; the stores, in terms of both merchandise and personnel, are a front line of the park's contact with its visitors and should exemplify quality and professionalism. The concessioner is responsible for assuring that gift store personnel possess basic information about Crater Lake and understand park interpretive themes and messages to be conveyed to visitors. The concessioner will provide training for its retail sales clerks concerning the sources, quality, and authenticity of merchandise items.

2. Gift and souvenir sales items will have an identifiable relationship to Crater Lake National Park, park features, park natural and cultural resources and values, and related themes.
3. The National Park Service and the concessioner will identify appropriate themes and categories for the gift store. Gifts and souvenir items, which do not relate to any of the identified themes, will be phased out of the inventory.
4. Sales items with exceptional park interpretive, environmental, or cultural value will be provided prominent display space.
5. Handcraft items representing Crater Lake and Pacific Northwest themes, including authentic Native American handcraft, will be sought and encouraged; conversely, handcraft items identified with other regions of the United States will be discouraged.
6. When possible and appropriate, informational tags will be attached to sales items in an interpretive/educational effort to illustrate the relationship of the sales items to park interpretive themes and goals.
7. These guidelines are for gift and souvenir sales items. It is recognized that the concessioner will also sell groceries, camper supplies, activity items, clothing, sundries, and other general merchandise and convenience items necessary and appropriate to meet the needs of visitors.

Historic Structures and Preservation Goals

Crater Lake Lodge is a historic structure listed on the National Register of Historic Places. Concessioner maintenance responsibilities for the lodge are set forth as part of the concession contract under a Maintenance Plan (Exhibit H). In providing the upkeep and maintenance of the lodge building there is an additional responsibility for compliance with Section 106 of the National Historic Preservation Act. Any proposed action that has the potential to affect the integrity of the lodge building must be reviewed for compliance.

A Section 106 review is initiated whenever proposed undertakings may affect character defining features of Crater Lake Lodge. In the lodge, for example, defining features have been identified as including building configuration, stone walls, wood shingle walls, chimneys, roof, jerkinhead gables, dormers, eave/gable brackets, exposed eaves, windows, the canopy at the lobby entrance, interior walls, fireplaces, Great Hall stairs, beam ceilings in public spaces, floors, light fixtures, plumbing fixtures, log columns, dining room cabinets, and interior doors. Any undertakings that affect the Great Hall, Dining Room, and Lobby are subject to review under the Section 106 compliance process. Depending upon the nature of the proposed undertaking, it is occasionally necessary to consult with the State Historic Preservation Officer before making a determination on the appropriateness of a particular project.

The rustic designed landscape and historic buildings in Rim Village have been designated as a National Historic District. Any actions affecting the Rim Village National Historic District are also subject to review under the Section 106 compliance process.

PARK PLANNING DOCUMENTS AND PLANNED IMPROVEMENTS

Visitor Services Plan

The 1998 Visitor Services Plan sets the direction for both commercial visitor services and National Park Service interpretive services at Crater Lake National Park. It is expected that the concessioner and the National Park Service will work in cooperation to implement the provisions of this Visitor Services Plan. Under the plan some existing commercial visitor services will be modified to better serve the park visitors. A major objective of the concession contract is to turn the concepts described in the plan into reality.

Park Improvement Projects

The National Park Service has several major improvement projects in the planning stage subject to the availability of appropriated funds. These projects will complement concessioner developments and improve the visitor experience at Crater Lake National Park.

1. Rehabilitation of Historic Structures and Landscape at Rim Village.
Projected for the year 2002.

Under this project five historic buildings/features will be rehabilitated: a) Sinnott Memorial, b) Plaza Comfort Station, c) Promenade and rock wall, d) Kiser Studio, e) Community House. The project also calls for rehabilitation of the historic designed landscape.

The Sinnott Memorial Overlook provides visitors with spectacular views of Crater Lake and serves as the primary location for interpretive programs featuring the geology and formation of the lake and caldera. The historic Kiser Studio serves as an interim National Park Service visitor information center at Rim Village. After rehabilitation, the historic Community House will be used for summer evening interpretive programs.

2. Rehabilitation of Cafeteria/Gift Store Building
 Relocation of Rim Village visitor parking area
 Projected for the year 2005.

The cafeteria building will be converted to its historic configuration and external appearance, and the most recent additions to the building are to be removed. The rehabilitated facility will provide deli-style food service and limited sundry and gift/souvenir sales related to Crater Lake. The National Park Service will undertake this rehabilitation project; however, it is expected that the concessioner will complete the interior finishes and remodeling. The parking lot in front of the cafeteria, next to the caldera rim, will be removed; and a new parking lot will be built south of the cafeteria.

3. Visitor Information Building
 Projected for the year 2006.

The National Park Service plans to build a new Visitor Contact Station at Rim Village near the rehabilitated food service/gift sales facility. The new Visitor Contact Station will provide information, orientation, interpretation, Natural History Association sales, and year round views of Crater Lake.

4. Rim Dormitory

The Rim Dormitory is to be removed and the site restored to its natural condition by the National Park Service as soon as replacement housing has been developed and is ready for occupancy. The dormitory building has been determined to be unsightly and stands within the viewshed of Crater Lake Lodge. Removal of the Rim Dormitory will greatly improve the landscape adjacent to Crater Lake, the park's prime resource.

PROPOSAL

PROPOSAL INSTRUCTIONS

Before completing a proposal, carefully read and consider these instructions, the concession contract document, the exhibits to the concession contract document, and the proposal package, as well as the other information in this prospectus, its appendix and any other documents to which it refers.

Response Period for Submission of Proposals

This prospectus is issued under the authority of 36 CFR Part 51. In the event of any inconsistency between the terms of this prospectus and 36 CFR Part 51, 36 CFR Part 51 will control.

All persons that submit a proposal in response to this prospectus are presumed to be informed of the provisions of 36 CFR Part 51, including, without limitation, requirements regarding purchase and disposition of the personal property and possessory interest of the existing concessioner set forth in subparts G and H of 36 CFR Part 51.

Proposals must be received within **ONE HUNDRED AND FIVE (105) calendar days** from the date this prospectus was announced. Specific dates are shown on the front page of this prospectus. Proper public notice has been given, as required by Part 51 of Title 36 of the Code of Federal Regulations. The National Park Service considers that **ONE HUNDRED AND FIVE (105) calendar days** is a sufficient response time taking into account the limited scope of services to be provided under this contract.

Only an offeror submitting a responsive proposal is eligible to be awarded the new concession contract. A responsive proposal means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the new concession contract and prospectus and as having provided the information required by the prospectus. The minimum requirements for the new concession contract are identified in Part A of the Proposal Package. Offerors must agree in their transmittal letter to the minimum requirements of the Prospectus as identified in Part A, and provide the information required by Part B on all subfactors in order for the proposal to be considered responsive.

Form in Which Proposal Must Be Submitted

You must follow the format provided in the proposal package, including in its entirety without alteration the "Offeror's Transmittal Letter," in applying for the concession opportunity. Failure to submit the Offeror's Transmittal Letter without alteration (except for filling in the indicated blanks) will make your proposal non-responsive.

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

Please number each page and section in your completed proposal according to its corresponding location in the proposal package. Feel free to add any relevant information to your proposal, while staying within the organizational framework in the proposal package.

Where and How to Submit a Proposal

Completed proposals and any modifications of them must be submitted to the National Park Service at the address and by the close of business on the due date shown on the front page of this prospectus. Proposals may be delivered in any manner convenient to the Offeror during normal business hours of the receiving office.

Submit three copies of your proposal, following the format of the proposal package presented within this Prospectus.

Proposals and modifications of them must be enclosed in sealed envelopes with the following marked on the envelope:

- **"CONCESSION PROPOSAL, MAIL ROOM DO NOT OPEN."**
- **The due date specified in this prospectus for receipt of the proposal by the National Park Service**
- **The name and address of the Offeror.**

As Proposals May Be Considered Public Documents

All proposals submitted in response to this Prospectus may be disclosed by the Department of the Interior to any person, upon request, to the extent required by the Freedom of Information Act. If you believe that your proposal contains trade secrets or confidential commercial and financial information exempt from disclosure under the Freedom of Information Act (5 USC 552), mark the cover page of each copy of the proposal with the following legend:

"The information specifically identified on pages of this proposal constitutes trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act. The Offeror requests that this information not be disclosed to the public, except as may be required by law."

You must specifically identify what you consider to be trade secret information or confidential commercial and financial information on the page of the proposal on which it appears, and you must mark each such page with the following legend:

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

"This page contains trade secrets or confidential commercial and financial information that the Offeror believes to be exempt from disclosure under the Freedom of Information Act, and which is subject to the legend contained on the cover page of this proposal."

Information so identified shall not be made public by the National Park Service except in accordance with law.

Questions

If you do not understand something in this prospectus, you must submit your question in writing to the contact person noted on the cover of the prospectus, no later than thirty (30) days in advance of the submittal date. The National Park Service will respond to your question in writing, and will provide the question and response to all potential Offerors who have requested a Prospectus. Questions submitted after this date will not be answered. Because the National Park Service must provide equal information to all Offerors, there must be sufficient time allowed to inform all interested parties of such questions and answers.

Evaluation of Proposals and Selection

Selection Factors, how the National Park Service will evaluate proposals and select a Concessioner:

Evaluation. The Director will apply the principal selection factors and secondary factors as set forth in CFR 36 Part 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation discussing any subfactors when applicable.

Scoring. For each selection factor the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received if any.

The first four principal factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor will be scored from zero to three. The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

Principal Selection Factors. The five principal selection factors are:

Principal selection factor 1. The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

Principal selection factor 2. The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

Principal selection factor 3. The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

Principal selection factor 4. The financial capability of the offeror to carry out its proposal;

Principal selection factor 5. The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

Secondary Selection Factors.

The secondary selection factor is:

The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of the park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, recycling and green procurement.

Selecting the best proposal. The National Park Service will select the proposal with the highest cumulative point score as the best proposal. If two or more proposals receive the same highest point score, then the Director will select as the best proposal (from among the proposals with the same highest point score) the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of 36 CFR Part 51. Consideration of revenue to the United States in this determination and in scoring proposals under Principal Factor 5 will be subordinate to the objectives of protecting, conserving and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates (36 CFR §51.16(c)).

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

Right of Preference

PREFERRED OFFEROR DETERMINATIONS.

A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with 36 CFR §51.27.

A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match the requirements of the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

Under the provisions cited in 36 CFR § 51.37, the Director has determined that the new concession contract is not a qualified concession contract as the anticipated annual gross receipts are expected to exceed \$500,000 in the first 12 months of the new concession contract. A preferred offeror does not exist for purposes of the exercise of a right of preference to the award of a new concession contract. This solicitation for a new contract is fully competitive as provided for in PL 105-391.

Congressional Review

Contracts issued for a term of ten years or more, or when the annual gross receipts are anticipated to exceed \$5,000,000, are required by law to be submitted to the Congress for sixty days before they may be awarded. The new concession contract will be submitted to the Congress because anticipated gross receipts exceed \$5,000,000 and the term anticipated is 15 years.

Cautions to Offerors about Submission and Evaluation of Proposals

1. **All information regarding this prospectus will be issued in writing.** No National Park Service or other government official is authorized to make substantive oral representations relating to this matter, and no offeror should rely on any oral representations made by government officials with respect to this transaction.
2. The proposal includes the selection factors to be used by the National Park Service to evaluate proposals. Under each factor, the National Park Service identifies subfactors to ensure that all elements of the factor are considered. You, the Offeror, should ensure that you fully address all of the selection factors and related subfactors.
3. This prospectus and related documents reflect the views and objectives of the National Park Service with regard to the proposed concession operation. **Should you**

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

believe any statement in the prospectus to be inaccurate, you must submit comments to the National Park Service in writing, no later than thirty days prior to the due date for proposals. Send your comments to the office named in the cover of this prospectus for the receipt of proposals.

4. The information provided in this prospectus, including the Appendix, is provided to allow offerors to understand the operations and terms of the new concession contract. However, the information is provided throughout all of the documents contained in this prospectus. Offerors are encouraged to thoroughly review all information and required submittal documents before beginning to prepare a proposal. In the event of any inconsistencies between this prospectus and 36 CFR , Part 51, 36 CFR, Part 51 will prevail.
5. A proposal to expand the scope of facilities and/or services beyond that identified in this prospectus will not be considered in the evaluation of proposals.
6. A proposal to provide direct or indirect monetary or other benefits to the park or government not within the scope or requirements of the contract will not be considered in the evaluation of proposals.
7. If you propose to make any financial commitments in response to any selection factor, your proposal will be closely reviewed and analyzed against your financial statements and supporting documents. Such documents reviewed and analyzed will include but not be limited to the pro forma income statements, balance sheets, and cash flow statements required in the proposal.
8. The proposal and related materials submitted should reflect the entire proposal you are making. The National Park Service will consider your written submission as your full and final proposal in response to the prospectus, and will make its selection based on the written information you have submitted. Do not assume that the National Park Service knows anything about you or your proposal. Do not assume that any information about you or your proposal, previous correspondence or previous submissions are in the possession of or will be considered by the National Park Service. This is true even if you are the current concessioner or have operated another concession within the park area.
9. The draft concession contract and its exhibits, which set forth the terms and conditions under which the concession operation is to be conducted, are attached. The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may also cancel a solicitation at any time before the award of the concession contract if the Director determines in its discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or reissued solicitation for this concession contract. (36 CFR §51.11).

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

10. Except as provided under 36 CFR Section 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the award of a contract), the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded.

11. The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal, but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so, and unless the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals.

12. The selected offeror, including any preferred offeror, must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract within the time period specified by the Director, the Director will select another responsive proposal for award of the concession contract, or will cancel the selection and may resolicit the new concession contract.

13. Document delivery services, including overnight delivery, to some areas may not provide true overnight delivery. Offerors are encouraged to insure the timely submittal of proposals by contacting the delivery service of their choice regarding delivery availability for the specific location specified on the front page of this prospectus.

The NPS, in accordance with 36 CFR Part 51, may include, as terms of the new concession contract, appropriate elements of the proposal selected for award of the concession contract.

15. Offerors are responsible for undertaking appropriate due diligence with respect to this business opportunity. All of the statements made in this prospectus regarding the nature of the business and its likely future are only opinions of the National Park Service. Offerors should not rely on any representations of the National Park Service in this regard.

*** Crater Lake National Park ***

**** Pacific West Region - National Park Service ****

Proposal Package

**Department Of Interior
National Park Service
Crater Lake National Park**

**Proposal to Operate Lodging, Campground, Food Service
Merchandising, Tour Boat Service, Gas Service and Employee Housing Services
Within Crater Lake National Park**

Date:
(Prospectus Issued)

DUE DATE: All applications and any modifications of them must be received at the following address:

National Park Service
Pacific West Regional Office
Chief, Concessions Management
600 Harrison Street, Suite 145
San Francisco, California 94107-1372
Telephone: 415-427-1369

**No Later Than: _____
By Close Of Business: 4:00 P.M.**

*** Crater Lake National Park ***
**** Pacific West Region – National Park Service ****

The Proposal Letter set forth below indicates your acceptance of the terms and conditions of the concession opportunity as set forth in the Prospectus. It indicates your intention to comply with the required elements of the contract. The letter must bear original signatures. The National Park Service will review the entire Proposal Package to determine whether your proposal in fact accepts without condition the terms and conditions of this Prospectus. If not, your proposal may be considered non-responsive, even though you submitted an unconditional Proposal Letter.

If a court of competent jurisdiction determines that any term of the prospectus is unlawful, then any Offeror may withdraw its proposal at any time prior to award of the contract without penalty and may submit a new proposal in accordance with any amendment to, or resolicitation of, the Prospectus.

PROPOSAL FOR CONCESSION OPERATION

To: Mr. John J. Reynolds
Regional Director
Pacific West Region
600 Harrison Street, Suite 145
San Francisco, California 94107-1372

Attention: Office of Concession Program Management

Sir/Madam:

(I) (We) hereby offer to provide visitor services and facilities at Crater Lake National Park in accordance with the terms and conditions specified in Concession Contract No CC-CRLA001-02, provided in the prospectus issued by the public notice in the Commerce Business Daily dated _____, and to execute the new concession contract without substantive modification (except as may be required by National Park Service pursuant to the terms of the prospectus).

(I) (We) are enclosing the required "PROPOSAL" which, by this reference, is made a part hereof. (I) (We) certify that the information furnished herewith is true to the best of (my) (our) knowledge and belief. (I) (We) agree to meet all the minimum requirements of the concession contract, and the prospectus, and that (I) (We) have provided all of the mandatory information specified in the prospectus.

(I)(We) certify in accordance with 43 CFR Part 12 regarding debarment, suspension, ineligibility and voluntary exclusion the following:

Any of the individuals or entities seeking participation in this concession contract are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a public transaction by a federal department or agency.

Within the three years preceding submission of the Proposal, none of the individuals or entities seeking participation in this concession contract have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, or for violation of federal or state antitrust statutes or for commission of embezzlement, theft, forgery, bribery, falsification of records, making false statements, or receiving stolen property.

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

None of the individuals or entities seeking participation in this concession contract are presently indicted for or otherwise criminally or civilly charged by a federal, state or local unit of the government with commission of any of the offenses.

The individuals or entities seeking participation in this concession contract have not had one or more public transactions (federal, state or local) terminated for cause or default within the three-year period preceding the submission of this proposal.

(I)(We), by submitting this proposal hereby agree, if selected for award of the concession contract:

1. To the minimum requirements of the prospectus as identified in Part A of this proposal package.
2. To complete the execution of the final concession contract within thirty (30) working days after it is presented by the National Park Service.
3. To commence operations under the concession contract on the effective date as stated in Section 1 of the concession contract.
4. To acquire the possessory interest and personal property of the existing concessioner under the terms of the existing concession contract and 36 CFR Part 51.
5. To resolve any dispute regarding the value of possessory interest or personal property of the existing concessioner in accordance with the applicable provisions of Subpart H of 36 CFR Part 51.
6. To the conversion of the possessory interest held under the existing concession contract to leasehold surrender interest under the terms of the concession contract in accordance with the applicable provisions of Subpart H of 36 CFR Part 51.
7. To the terms and conditions described in the Business Opportunity section of the prospectus in the event that the National Park Service estimate of the existing concessioner's possessory interest differs from the value of the possessory interest when determined pursuant to applicable procedure of the existing concession contract and/or 36 CFR Part 51.

BY _____ DATE _____
(Type or Print Name)

ORIGINAL SIGNATURE _____

TITLE _____

ADDRESS _____

CERTIFICATE OF CORPORATE OFFEROR)
(Offerors who are not corporations should skip this certificate)

I, _____, certify that I am the _____ of the corporation named as Offeror herein; that _____, who signed this proposal on behalf of the Offeror, was then _____ of said corporation; that said proposal was duly signed for and in behalf of the corporation by authority of its governing body within the scope of its corporate powers.

BY: _____ DATE _____
(Type of print name and date)

Original Signature

TITLE _____

ADDRESS _____

PART A

The minimum requirements for the new concession contract are identified in this Part A of the proposal package. If the offeror, in its proposal letter, does not agree to these minimum requirements, the proposal will be considered non-responsive.

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING AND PRESERVING RESOURCES OF THE PARK AREA.

(I)(We) agree to comply with all terms and conditions in the concession contract, including compliance with all applicable laws, including, without limitation, environmental protection and conservation laws, under the terms and conditions specified in the concession contract.

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

(I)(We) agree to comply with all the terms and conditions specified in the concession contract, including its exhibits.

(I)(We) agree to operate at the currently approved rates during the term of the concession contract unless a new rate schedule is approved by the Secretary, in accordance with 16 U.S.C.5955.

(I)(We) agree to accept the Concession Facilities, and any assigned government personal property “as is” as required by the concession contract, Section 8(f).

(I)(We) agree to carry out the required Concession Facilities Improvement Program according to the terms of the concession contract, including the time frames established by the Secretary.

(I)(We) agree to accept the “Repair and Maintenance Reserve” described in the concession contract, as it now exists, including the administrative responsibilities associated with these funds.

(I)(We) accept without condition the Maintenance Plan included as Exhibit H of the concession contract

(I)(We) accept without condition the Operating Plan included as Exhibit B of the concession contract.

(I)(We) agree to implement an equal opportunity program and comply with the terms of the equal opportunity and handicapped access requirements of the concession contract.

(I)(We) agree to develop and implement an effective health and safety program (Risk Management Program), according to the requirements of the concession contract for such programs.

(I)(We) agree to meet the public liability and property insurance requirements of the concession contract and agree to provide property and liability insurance of at least the types and levels of coverage described in the concession contract.

PRINCIPAL SELECTION FACTOR 5. THE AMOUNT OF THE PROPOSED MINIMUM FRANCHISE FEE, IF ANY, AND/OR ANY OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR.

(I)(We) agree to the minimum franchise fee of three percent (3%) of annual gross receipts, and agree to pay any adjustment in the franchise fee offered in our proposal that may be accepted by the National Park Service.

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

PART B

Offerors must agree, in their proposal letter, to the minimum requirements identified in Part A of this proposal package, and must provide the information required by the following Part B subfactors to be considered responsive.

PRINCIPAL SELECTION FACTORS

PRINCIPAL SELECTION FACTOR 1. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROTECTING, CONSERVING, AND PRESERVING RESOURCES OF THE PARK AREA.

SubfactorB1(a) The National Park Service is committed to the conservation, protection and preservation of the natural and cultural resources of Crater Lake National Park. In complying with all applicable laws relating to the protection, conservation and preservation of these resources, please address how you are going to comply with park specific policies and planning documents.

1. Certain Concession Facilities are historic structures that are listed or eligible for listing on the National Register of Historic Places. All repairs, rehabilitation and construction having an effect on cultural resources requires Section 106 consultation with the State Historic Preservation Officer.

- a. How will you ensure that the integrity of these facilities is maintained?
- b. What types of specialized training will be provided to staff responsible for maintaining these facilities?
- c. How will you ensure that no repair, rehabilitation or construction is initiated prior to appropriate consultation with the State Historic Preservation Officer?

Subfactor B1(b) Submit with your offer a draft Environmental Management Plan (EMP) for this operation, addressing the elements identified in the concession contract Section 6, Environmental and Cultural Protection. The draft EMP will document processes and procedures to be established that ensure compliance with Applicable Laws related to protection, conservation and preservation of the environment.

Specific objective in the concessioner's EMP should include:

- Hazard material and waste management
- Solid waste management (including recycling and composting where appropriate)
- Education of the regarding environmental protection and awareness
- Water and energy conservation
- Fuel storage and delivery systems (must meet all applicable requirements including underground and aboveground storage)
- Emergency planning and response
- Pollution prevention and waste reduction
- Protection of water quality
- Promotion of night skies from light pollution
- Reduction of noise and protection of natural quiet

Weed and pest management practices

Subfactor B1(c) Please identify your environmental program manager, and provide a brief description of his/her qualifications and past experience with regard to managing an environmental program. If the environmental program manager has not yet been selected, please identify the training and experience factors you will take into consideration in selecting the individual to fill this position.

Subfactor B1(d) Describe your plan for the maintenance of facilities and equipment, and replacement of furniture, fixtures, and equipment. Show how those plans are systematic and reflect the goals of sustainable, high quality facilities.

Subfactor B1(e) Concession operations have potential to adversely impact the natural resources of the park.

a. Describe the actions your organization will undertake to ensure minimal impact on the caldera and lake ecosystems with regards to the boat tour operation.

b. Describe how your maintenance efforts will utilize Best Management Practices to prevent the pollution of the air, water and ground. Include how you intend to dispose and recycle hazardous material.

c. How will you ensure that ground-disturbing activities have been previously approved by the National Park Service?

d. How will you ensure that your operations or employees' activities do not adversely impact park resources, i.e., parking cars outside parking areas; excessive grease getting into sewer systems, hazardous materials spills, etc.?

PRINCIPAL SELECTION FACTOR 2. THE RESPONSIVENESS OF THE PROPOSAL TO THE OBJECTIVES, AS DESCRIBED IN THE PROSPECTUS, OF PROVIDING NECESSARY AND APPROPRIATE VISITOR SERVICES AT REASONABLE RATES.

Subfactor B2(a) Provide your specific plans for each of the required and/or authorized services identified in Section 3 of the concession contract. Remember that the more complete and well-thought-out your plans, the better support you give to your answers to the required subfactors.

Subfactor B2(b) Please provide the following information regarding your implementation of the Concessions Facilities Improvement Program required in the concession contract.

The estimates given in the concession contract for the cost involved in this program are Class “C” estimates. Class C estimates are conceptual cost estimates based on square foot costs of similar construction, or on identifiable known unit costs of similar construction items. Class C estimates are usually prepared before a fully defined scope of work is developed, and they consider such factors as job location, unusual site conditions, sources of materials and supplies, and availability and skills of local labor pools.

1. Describe how you implement the proposed construction schedule for the project required by the Concession Facilities Improvements Program.

- a. How do you propose to approach the planning, design and construction process?
- b. What is the projected construction cost for the project?
- c. What is your projected timeline to actually begin construction of the new restaurant/gift store?

Subfactor B2(c) The offeror must accept the proposed Maintenance Plan without condition. The concession contract requires the concessioner to maintain the facilities and assigned lands to the satisfaction of the Director in accordance with the Maintenance Plan and its attachments attached to the concession contract. If you could make changes to the Maintenance Plan that would improve services to the visitors with respect to maintenance, please describe any additions or changes that you would propose to make. You can agree to accept the proposed Maintenance Plan without condition, as required in Part A, and still answer this question.

Subfactor B2(d) The offeror must accept the proposed Operating Plan without condition. The concession contract requires the concessioner to operate the facilities and services to the satisfaction of the Director in accordance with the Operating Plan and its attachments attached to the concession contract. If you could make changes to the Operating Plan that would improve services to the visitors with respect to operations, please describe any additions or changes that you would propose to make. You can agree to accept the proposed Operating Plan without condition, as required in Part A, and still answer this question.

Subfactor B2(e) Submit a draft Risk Management Plan to address the elements of an effective health and safety program, according to the requirements of the concession contract for such a program. This plan must address the following:

- a. Management's Policy Statement, Duties, Employees' Responsibilities and Administration
- b. Inspection and Abatement
- c. Accident and Investigation and Reporting
- d. Safety/Health Committee
- e. Training
- f. Emergency Procedures

Subfactor B2(f) Employee Training. Concession employees are often a primary source of visitor information about park resources.

- a. How will you train your employees about the purpose and significance of Crater Lake National Park, its surrounding area and the National Park Service?
- b. How will you train your employees to provide information to visitors? Recognizing that certain employees will have more contact and more responsibility in this area, what will be the minimum level of training you will provide to all employees? What types of training will you provide to employees with more public contact, such as table attendants, retail clerks and station attendants? What training will you provide to employees with direct interpretive responsibilities i.e. tour boat guides?
- c. Are you willing to participate in cross training on informational and interpretative topics associated with Crater Lake National Park and its surrounding area initiated by the park? What kind of cross training would be most beneficial to your staff?
- d. Would you allow employees to participate in cross training with the National Park Service at the company expense?

Subfactor B2(g) The National Park Service wishes to continually improve gift and souvenir operations to focus more on the park's interpretive themes (natural history, cultural history, archeology and safety). A goal is that merchandise should enhance appreciation and understanding of the park, the National Park System and the significance of the natural world and environment. The concession contract requires that the concessioner develop and implement a plan satisfactory to the Director that will assure gift merchandise to be sold or provided reflects the significance of the park, including conservation of resources, geology, wildlife, plant life, archeology, local Native American culture, and historic significance.

- a. How will your merchandising program fulfill the goals of the Exhibit B, Operating Plan, Item P, Handcraft, Gifts and Merchandise, of the concession contract? How will you approach developing store themes and decors, as well as necessary policies and sources of merchandise to successfully effect this program? Submit a draft plan that outlines your program for achieving this goal.
- b. How you will acquire and present merchandise that reflects the park's purpose and significance, and interpretive themes? Provide ideas or descriptions or sample products of interpretive methods, media and/or material you propose to provide.

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

- c. How will you approach developing appropriate interior themes in the retail, lodging and food service facilities that incorporates the park's interpretive themes? What changes, if any would you propose to improve the, Exhibit B, Operating Plan, item P. Handcraft, Gifts and Merchandise, of the concession contract?

Subfactor B2(h) It is the goal of the National Park Service to provide every visitor with multiple opportunities to learn about features of Crater Lake National Park and their significance. How do you plan to integrate interpretive message or activities into every suitable aspect of your operation? Include how you intend to deliver interpretive information about the relationship between concessioners and the National Park Service, Crater Lake culture and natural resources, park resource protection, and safety issues.

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

PRINCIPAL SELECTION FACTOR 3. THE EXPERIENCE AND RELATED BACKGROUND OF THE OFFEROR, INCLUDING THE PAST PERFORMANCE AND EXPERTISE OF THE OFFEROR IN PROVIDING THE SAME OR SIMILAR VISITOR SERVICES AS THOSE TO BE PROVIDED UNDER THE CONCESSION CONTRACT.

Subfactor B3(a) Describe the entity with which the National Park Service will contract. Clearly define the offeror's relationship to any superior and/or subordinate entities.

Using the format and instructions on the next two pages identify the offeror and each business organization, operator and any parties involved in management of the proposed concession operation. Add information necessary to make the relationships clear.

The following three elements give an overview of the information requested in this section.

1. Identify the "Offeror" formally. Has this business organization been in existence for some time, is it new, or do you propose to establish it?
2. Explain the financial circumstances, legal form, formal structure and ownership of the primary business organization that would provide the services advertised if your proposal is chosen. Identify any related, subordinate or superior business organizations and any other organizations, contractors, or subcontractors that will have a substantial role in managing, directing, operating, or otherwise carrying out the services to be provided. If the business organization is to be created, what guarantees will be provided by the entity submitting the proposal?
3. Identify any layers of related, subordinate or superior entities, significant contractors and/or subcontractors, or other organizations or individuals that will act in concert to provide the services required. Describe each of them and their relationships.

Support for Subfactor B3(a):

Provide an organizational chart showing the principal lines of authority within your primary business organization. Specify any related, subordinate, or superior business organizations or any other organizations, contractors, or subcontractors identified within subfactor 3(a) above.

BUSINESS ORGANIZATION IDENTIFICATION FORM

Complete this form for your primary business organization, and each related, subordinate and superior business organization, or any other organization, business organization, contractor or subcontractor identified under Items 1 through 4 stated above.

A. **Name:** _____

B. **Present Address:** _____

C. **Contact Person:** _____

D. **Present Telephone:** _____

E. **FAX Number:** _____

E-Mail Address: _____

F. **Form of business:** Corporation ____ Partnership ____ Individual ____ Other ____
(Sole Proprietor) (Explain)

G. **Describe the expected role of each in providing this concession service:** (parent, subsidiary, sub-contractor)

H. Ownership:

Names and Addresses of Owners (Corp: Show Controlling Interest; Close Corp: Show All)	Number and Type of Shares or Percentage of Ownership	Total Current Value of Investment
TOTAL OF ALL OWNERS		
TOTAL SHARES OUTSTANDING		

J. If a corporation, list the names, addresses, and titles of corporate officers and the names and affiliations of the members of the Board of Directors:

Name	Address	Title

State of Incorporation: _

K. The following attachments must be provided as applicable for each subject of the form:

1. For offerors and concessioners who are corporations:

- Articles of Incorporation
- Bylaws
- Certificate from the state of incorporation indicating that the corporation is in "good standing."

2. For offerors and concessioners who are partnerships: _

- Partnership agreements or joint venture agreements.

3. If the entity that is to be the concessioner is not formally in existence as of the time of submission of the proposal, demonstrate that the individual(s) or organization(s) that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in 36 CFR § 51.3.

Subfactor B3(b) Demonstrate the Offeror's competence to manage and operate the specific types of business activities required in this prospectus. Answer the required questions, following:

The National Park Service is looking for a business organization that has experience in managing the required and authorized services identified in Section 3 of the concession contract.

1. Give specific examples of business operations undertaken by the offeror that demonstrate this type of experience.
2. Describe your background in the overnight lodging accommodations, food and beverage and merchandising industry you have managed. Describe the scope and complexity of these services. If you have not managed this type of an operation, how do you intend to acquire the expertise to manage such an operation?
3. Describe your background in management of campgrounds and support facilities associated with this type of operation. Describe the scope and complexity of these services. If you have not managed this type of an operation, how do you intend to acquire the expertise to manage such an operation?

4. Using the format shown on the following page, and adding to it as necessary, provide detailed resumes for all key personnel who will be actively involved in the management of this business. Identify the specific role the individual is to play and describe that person's qualifications to play that role. Use the following guidelines to help you

Be sure to include the following where applicable:

- sole proprietor
- current and proposed partners
- key management employees, including the proposed on-site management
- owners of corporations
- operating officers who will be actively involved in the management of this business.

Identify the specific role each individual is to play and describe that person's qualifications to play that role.

When discussing work experience, be specific about

- size of operation
- dates
- area of operation
- specific duties
- number of people supervised
- hours worked per week
- other factors that would be helpful to reviewers.

Include

- training
- education
- training, special qualifications, ratings, or licenses needed in some special occupations.

Note that additional support for this subfactor may be provided, as described on the page after next.

**INDIVIDUAL EXPERIENCE AND RELATED BACKGROUND OF CORPORATE
MANAGEMENT STRUCTURE**

To be used in answering Required Subfactor 3(b)

Note to Offeror: Complete for each person who will have any role in the management of this business.

- A. Individual's Name
- B. Name of Current Employer
- C. Address
- D. (Area Code +) Telephone Number
 Fax Number
 E-Mail Address
- E. Nature of Business
- F. Exact Title of Position (indicate if self-employed)
- G. Dates of Employment (from--to)
- H. Number of People Supervised
- I. Description of Duties and Responsibilities
- J. Education, Degrees, and Special Skills
- K. Role in Proposed Business
 - 1. Qualifications for That Role
 - 2. Estimated Hours per Week

Support for Subfactor B3(b)

1. Provide an on-site organizational chart showing the principal lines of authority between departments or functional areas and managers.

Include all key managerial and on-site managerial positions (planning, finance, administration, operations, maintenance, etc.) Provide names and resumes of individuals, background experience, and duties for all on-site managerial positions associated with administering the proposed concession contract. If the individuals are not known, identify positions and duties to be performed.

2. Describe the decision-making authority to be delegated to the on-site manager(s). Who will be the management decision-maker? With whom will the National Park Service deal regarding day-to-day operations and issues? If you can name the person or people to hold such positions, please do.

3. Indicate the number of employees in each department and provide summary descriptions of basic functions where those are not obvious by title. In addition, provide a description of any training programs to be used through out-sourcing to ensure core competency, and provide opportunities for advancement of employees.
4. Provide proposed wage levels and estimated hours per week for each position or group of positions.
5. What standards or procedures will you apply to the pre-screening, training, termination and hiring of personnel? (applications, drug testing, law enforcement clearances, reference checks, and interviews requirements, etc.)
6. Define how you intend to initiate and carry out a drug-free environment and eliminate substance abuse in your work force. What will you do to identify individuals who abuse drugs and/or alcohol? How will you initiate a drug abuse and alcohol abuse educational program? What type of referral for treatment program will you provide? What type of commitment do and will you propose to help those who need assistance?
7. How will you ensure your employees will be hospitable and exercise courtesy and consideration in their relations with the public?
8. How will you achieve a constant standard level of knowledge among the staff about the park and its rules, regulations, special programs, as well as a consistent friendly and positive attitude? How would you go about setting standards and training to achieve those standards?
9. Outline your proposed skills training program that encompasses each of the required and authorized services identified in Section 3 of the concession contract.
10. Where the concession, or parts of it, will be making a significant phase-up in operations after reduced services in the off-season or after a period of closure or near closure, such as winter shut-down, describe the training program that will prepare the staff for opening business.
11. List the important aspects of managing operations such as those applied for by the prospectus, and clearly show how you would deal with them.
12. Section 4(b)(2) of the concession contract requires the concessioner to provide appropriate employee recreational activities. How do you propose to achieve this goal?

Subfactor B3(c) The Offeror gives information regarding any past business difficulties. Answer each of the following fully. The National Park Service will take into consideration circumstances surrounding any past difficulties. Inaccurate answers here will result in the proposal being considered unresponsive.

1. Has the Offeror ever defaulted from or been terminated from a management or concession contract, or been forbidden from contracting by a public agency or private company? If YES provide full details of the circumstances.

YES ____

NO ____

2. Describe any filings for bankruptcy, fines or penalties levied by government agencies, including but limited to any and all legal proceedings against the Offeror, that are related to your past performance in providing facilities and services similar to those described in the prospectus. Include the date of those occurrences and all related information.

Subfactor B3(d) Demonstrate the Offeror's ability to carry out the Concession Facilities Improvement Program as defined in the new concession contract by Addressing the following:

1. Have you been involved in any projects relating to environmentally sensitive planning and designed? If so, describe your involvement, the nature of the project, and the cost and size of the project.

2. Construction of facilities within Crater Lake National Park should reflect the natural and cultural setting within the Park and create a sustainable environmentally-sensitive development. Provide a vision of the architectural theme and methods of incorporating the principles of sustainable design. The vision can be articulated through design concepts, sketches, renderings, and/or narrative.

3. Construction of all kinds should harmoniously integrate with the local environment. Architectural style, design elements and construction materials should reflect the natural and cultural history of the park. Additionally, National Park Service is committed to the concepts of sustainable design, as defined by the American Institute of Architects. Please provide a description of your knowledge of, experience with and commitment to sustainable design.

4. Describe construction projects you have managed or undertaken. Describe your involvement, the nature of the project, and the cost and size of the project. If you have not managed or undertaken construction projects, how do you intend to acquire the expertise to complete the project?

PRINCIPAL SELECTION FACTOR 4. THE OFFEROR'S FINANCIAL CAPABILITY

Subfactor B4(a) The offeror demonstrates a realistic estimate of acquisition, start-up, and operating costs of this business.

1. Summarize the offeror's acquisition costs for the proposed business as outlined following. Note the definitions of kinds of property, following.

Tangible Property

Real Property

- a. Acquisition cost, buildings and structures \$ _____
- b. Initial construction or rehabilitation costs
- | | |
|------------------------------|----------|
| Contractual Building Program | \$ _____ |
| Rehabilitation Cost | \$ _____ |
| Initial Replacement | \$ _____ |
| Other: _____ | \$ _____ |

Personal Property

- a. Furniture, Fixtures and Equipment
- | | |
|-------------|----------|
| Acquisition | \$ _____ |
| New Items | \$ _____ |
- b. Merchandise and Supplies
- | | |
|---------------|----------|
| Acquisition | \$ _____ |
| New Inventory | \$ _____ |
- c. Transportation Vehicles
- | | |
|-------------|----------|
| Acquisition | \$ _____ |
| New Items | \$ _____ |

Intangible Property

- a. Organization Cost \$ _____
- | | |
|--------------|----------|
| Goodwill | \$ _____ |
| Other: _____ | \$ _____ |
- Other Working Capital \$ _____
- Other (Specify) _____ \$ _____
- TOTAL ALL SOURCES \$ _____

Tangible Property -	Physical property of a relatively permanent character used in the normal conduct of a business. Examples of tangible property are buildings, equipment, machines, and tools. Such tangible property is depreciated rather than expensed.
Real Property -	Tangible property permanently affixed to land or other real property. Real Property includes structures, facilities and appurtenances such as loading docks, heating and air conditioning systems, and walks and drives.
Personal Property -	Tangible property associated with the operation of the business that is not affixed permanently to the realty. Examples of personal property include all furniture and fixtures that are movable, transportation vehicles and many others.
Intangible Property -	A long-term property item not having physical characteristics. Intangible property derives its value by affording special rights or advantages expected to contribute to the earnings of a business. Examples of intangible property include patents, copyrights, trademarks, organization cost and goodwill. Intangible assets are amortized, rather than depreciated.
Working Capital -	The excess of current assets over current liabilities. Current assets consist of cash, marketable securities, short-term receivables, inventories and prepaid expenses. Current liabilities include all debt that is considered payable within the accounting year.

Subfactor B4(b) The offeror demonstrates that needed funding (equity and/or borrowed) is available.

The "needed funding" is the total acquisition cost for the business, amount listed as "TOTAL FROM ALL SOURCES" from Subfactor 4(a).

1. Provide the following information appropriate for your current entity. Do this even if you are the current concessioner:

a. For offerors who are corporations or partnerships; provide

- the latest financial statement for your business and its parent company (if any),
- the notes to the statements,
- any Security Exchange Commission filings,
- similar explanatory material
- related audit report.

b. For sole proprietors, unconventional lenders or proposed individual investors: provide personal financial statements.

2. Attach your current credit report.

3. Identify the source(s) of all needed funds. Present specific and compelling evidence of your ability to obtain the necessary funds. Identify all sources and provide complete documentation. Explain fully the financial arrangements you propose to use, using the following guidelines:

- a. Document each source and availability of all funds with your current audited financial statements, financing agreements, letters of commitment, or similar supporting documents.
- b. If funds are to be obtained from lending institutions (banks, saving and loans, etc.) the letter of commitment must be on the lending institution's letterhead and include, as a minimum:
 - the amount of the loan
 - amount of interest
 - term of the loan
 - all encumbrances upon the loan.
- c. If funds are to be obtained from an individual, provide the following as appropriate:
 - current personal financial statement for the lender
 - documentation of any assets to be sold
 - written commitment from the lender
 - any other assurances that make a compelling demonstration that the funds are available and committed.
- d. Funds to be obtained from an existing asset must be supported. Prove in a compelling way that the asset will yield the necessary funds at the necessary time. The condition of the market for such items should indicate that you will be able to sell the asset at the necessary time and at a price sufficient to provide the funds needed. Provide the following documentation as appropriate:
 - description of the asset
 - condition of the asset
 - any encumbrances on that asset
 - qualified appraisals and other professional estimates of the value of the asset
 - proceeds of the sale of the assets.

Subfactor B4(c) The offeror demonstrates that its funding is adequate through its pro forma income statements and balance sheets, using the following guidelines:

Provide projected estimates of the revenues and expenses of the concession business in the form of annual pro forma income statements, balance sheets and statements of retained earnings for each year of the concession contract's term. These pro forma statements must be examined by an independent accounting firm or other economic and financial professionals with recognized experience in the accounting industry. A certification letter, on company letterhead, must be attached to the prospective financial statements giving some assurance as to the rationale used and comprehensive integrity of the pro forma statements.

Use the format which follows.

- Incorporate the annual inflation rate and estimates of real growth you anticipate.
- Attach your projections for revenue and expenses, along with your assumptions in

establishing these projections.

- For the income statement and balance sheet, break down operating revenue and expenses by month for the first two years of operations.
- Show annual cash flow.
- Use the outlines given on the following pages. You may add to these outlines, but do not do less, do not reduce the captions called for, and do not change the order of items. This said, you may use your own presentation approach, using a computer, etc.
- Explain the assumptions on which your projections are based to a degree sufficient for reviewers to judge the validity of your estimates.
- More detail is preferred over less.

Only receipts and expenses related to the services required and authorized by the contract and for which approved rates are given, not other services (outside the park), are to be included in your pro forma statements.

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

FORMAT TO USE FOR PRO FORMA (PROJECTED) INCOME STATEMENT

Show your Projections Annually for the Term of the Contract
Monthly for First Two Years

GROSS RECEIPTS (NET)

Lodging
Food
Beverage Sales (Alcoholic)
Souvenir
General Merchandise
Marina
Transportation
Other:

TOTAL GROSS RECEIPTS

COST OF SALES

Lodging
Food
Beverage (Alcoholic)
Souvenir
General Merchandise
Marina
Transportation
Other:

TOTAL COST OF SALES

GROSS PROFIT

DIRECT EXPENSES

Direct Payroll
Payroll Taxes & Benefits
Operating Supplies
Contract Services
Utilities
Repair & Maintenance
Auto Expense
Other:

TOTAL DIRECT EXPENSES

ADMIN & GENERAL EXPENSES

Officers Salaries
Other Salaries
Payroll Taxes & Benefits
Office Supplies
Telephone
Management Fees
Overhead Expenses
Professional Fees
Advertising
Other:

TOTAL ADMIN & GEN EXPENSES

FIXED EXPENSES

Rental Fee
Property Taxes
Insurance
Interest
Depreciation
Other:

TOTAL FIXED EXPENSES

GOVERNMENT FEES

Franchise Fee
Maintenance Reserve

TOTAL GOVERNMENT FEES

OTHER INCOME AND EXPENSES

Interest Income
Gain/Loss on sale of assets
Other:

INCOME BEFORE INCOME TAXES

INCOME TAXES

NET INCOME

FORMAT TO USE FOR PRO FORMA (PROJECTED) CASH FLOW STATEMENT

Show your Projections Annually for the Term of the Contract

CASH FLOW

OPERATING ACTIVITIES

Net Income

Adjustment to reconcile net income to net cash provided by operating activities

Depreciation

Gain/Loss on fixed assets

Other:

Net cash provided by operating activities

FINANCING ACTIVITIES

Dividends

Notes Payable

Other:

Net cash used in financing activities

INVESTMENT ACTIVITIES

Purchase of fixed assets

Proceed from sale of assets

Other:

Net cash used in investing activities

TOTAL CASH FLOW_

*** Crater Lake National Park ***

**** Pacific West Region – National Park Service ****

FORMAT TO USE FOR PRO FORMA BALANCE SHEET FORMAT

Show your Projections Annually for the Term of the Contract

CURRENT ASSETS

Cash
Inventories
Other

TOTAL CURRENT ASSETS _____

NET FIXED ASSETS

Fixed Assets
{Less} Accum. Depreciation.

TOTAL NET FIXED ASSETS _____

OTHER ASSETS

Other Assets

TOTAL CURRENT, NET FIXED AND OTHER ASSETS _____

CURRENT LIABILITIES

Accounts Payable
Current Maturities
Advance Deposits

TOTAL CURRENT LIABILITIES _____

LONG-TERM LIABILITIES

TOTAL LONG-TERM LIABILITIES _____

EQUITY/CAPITAL

TOTAL LIAB & EQUITY _____

PRINCIPAL SELECTION FACTOR 5. FRANCHISE FEE AND OTHER FORMS OF FINANCIAL CONSIDERATION TO THE DIRECTOR

The offer of a higher minimum franchise fee than the minimum franchise fee stated in the prospectus is generally beneficial to National Park Service and, accordingly, may result in a higher score under this selection factor. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park and of providing necessary and appropriate visitor services to the public at reasonable rates.

The minimum franchise fee acceptable to National Park Service is three percent (3%) of the annual gross receipts as defined in Section 2(i) of the new contract.

Subfactor B5(a) State the franchise fee that you propose. Express this fee as a percentage of annual gross receipts as defined in Section 2(i) of the new contract.

_____ Percent of annual gross receipts

SECONDARY SELECTION FACTORS

SECONDARY SELECTION FACTOR 1. THE OFFEROR PROPOSES TO CONDUCT ITS OPERATIONS IN A MANNER THAT FURTHERS THE PROTECTION, CONSERVATION AND PRESERVATION OF PARK AND OTHER RESOURCES THROUGH ENVIRONMENTAL MANAGEMENT PROGRAMS AND ACTIVITIES, INCLUDING BUT NOT LIMITED TO ENERGY CONSERVATION, WASTE REDUCTION, GREEN PROCUREMENT AND RECYCLING:

Subfactor B(S1)(a) Describe the Best Management Practices that you will apply in your operation (including, without limitation, the provision of visitor services, construction, maintenance, and acquisition) to further the protection, conservation and preservation of the park and other resources.

1. What steps will you take to practice water and energy conservation in daily operations, as well as in the design, construction and/or rehabilitation of facilities?
2. How will you reduce or eliminate use of hazardous materials in your park operations, i.e., petroleum based products, paint thinners, etc.?
3. How will you implement the recycling of antifreeze and motor oil into your operations?
4. Are there ways in which you can incorporate the use of alternative fuels into your park operations? What are they?
5. What other Best Management Practices can you employ to demonstrate that your company is a responsible steward of the environment and is utilizing the best available technology to protect park resources? Discuss your commitment to implementing cost reducing, energy efficient, and environmentally sound practices into all aspects of your operations.

Subfactor B(S1)(b) Reduction of solid waste is an objective of the National Park Service. Describe how you will develop, promote, and implement a recycling program for both public and commercial operations. Describe, in narrative form, your commitment to solid waste reduction and a recycling program.

1. Describe your plans for providing collection and removal of recycling materials, including but not limited to paper, newsprint, cardboard, bimetal, aluminum, plastics, and glass.
2. How do you propose to make meaningful reductions in solid waste, particularly in food service operation.

Subfactor B(S1)(c) The reduction of pollution and the use of toxic products in the park, within the constraints of U.S. Public Health Service codes, is an objective of the National Park Service. One method for doing so, that has been adopted by the National Park Service, is the use of environmentally preferable cleaning products for custodial, housekeeping, and fleet operations. Primary products utilized for these purposes are naturally derived from renewable resources. Please describe, in narrative form, your commitment to this important objective and your specific plans for reducing or eliminating the use of toxic products.

1. Outline your plans for the use of and/or the conversion to environmentally preferred cleaning products in your operations. If possible, provide examples of environmentally preferable cleaning products that could be used in custodial, housekeeping and boat operations.

2. How do you intend to identify products that meet the above objective ? What documentation will you require of the supplier?
3. Who, on your staff, will be responsible for monitoring this program? What are their qualifications to do so?

Subfactor B(S1)(d) Describe, in narrative form, your plans for communicating an environmental leadership ethic to park visitors and your own employees, as it relates to the resources of the park and to the environment generally.

APPENDIX

CONCESSION MANAGEMENT

THE NATIONAL PARK SERVICE AND ITS MISSION

America's National Park Service was created by Congress to "... conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations." Additionally, the Congress has declared that the National Park System should be, "... preserved and managed for the benefit and inspiration of all the people of the United States." The National Park Service has as its overall mission the preservation and public enjoyment of significant aspects of the nation's natural and cultural heritage.

The National Park Service is an agency (bureau) of the Department of the Interior. The Department of the Interior, through its various bureaus, has responsibility for much of our nationally owned public lands and natural and cultural resources. This includes fostering wise use of our land and water resources, protecting our fish and wildlife, preserving the environmental and cultural values of our national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The department also encourages stewardship and citizen responsibility for the public lands and promotes citizen participation in their care.

The National Park Service is managed by its Director who makes its policies under the direction of the Secretary of the Interior and through the Assistant Secretary, Fish and Wildlife and Parks. The Director seeks advice on policy and other concession-related matters from his Office of Concession Management. This office includes branches for financial, contracting, and planning and program matters.

CONCESSION PROGRAM MANAGEMENT

Concession Contract Management

As one of the means by which the public can be provided the facilities and services they need to enjoy national park areas, Congress has established a concession program in the National Park Service through the National Park Service Concessions Management Improvement Act of 1998 (Public Law 105-391). Title 36 of the Code of Federal Regulations contains important regulations for the preservation of the parks and administration of concession operations (36 CFR 51). Concession activities are also subject to Management Policies of the National Park Service.

The Secretary of the Interior, and them to whom he has delegated authority, are authorized to enter into concession contracts. The National Park Service may provide "necessary and appropriate" facilities and services for the visiting public through concession contracts.

These services include a wide variety of commercial visitor services from backcountry guiding to first-class hotel operations provided by private corporations, partnerships, individuals, or other entities under contract with the National Park Service. All exist for the purpose of providing park visitors with the services and accommodations that are necessary and appropriate for their full enjoyment of America's National Park Service-administered areas. The determination of which facilities and services are necessary and appropriate is made through the National Park Service's planning process. Needs vary with the purposes of the various park areas and their individual circumstances at the time of contracting.

The preceding description covers only the primary laws directly affecting the management of a National Park Service concession. Many other federal statutes apply. State and local laws and regulations may also apply depending on the nature of park jurisdiction. Some areas are exclusively federal in jurisdiction while others involve state and local jurisdiction.

The services to be provided under this contract are to be performed under the applicable laws, regulations, policies, and planning existing now or established during the term of the contract.

Concession contracts are issued under regulations unique to the National Park Service Concession Management Program. They are not subject to the Federal Acquisition Regulations (FAR).

Concession Program Management

The NPS Concession Program represents the interests of the National Park Service through three subdivisions: park, regional and Washington offices including the Concessions Program Center in Denver.

At each park there is, at the least, an individual assigned the task of being the concessioner's immediate contact. This may be a part-time duty in a park where concession activities are minor in nature. For parks with larger operations, a full-time staff will manage the park's immediate relationship with its concessioners and support the park superintendent.

For management purposes, the National Park Service is divided into seven regions, each with an office of the Regional Director. Each Regional Director's office has an office providing various technical functions including an Office of Concession Program Management. This concession management group provides advice to the region's parks and to the Regional Director and provides a variety of support functions to parks for contracting and other work.

In Washington, D.C., a staff of specialists makes policy recommendations to the Director and manages problem issues. This office is under the leadership of the Concession Program Manager, National Park Service. This office is part of the Park Operation and Education subdivision of the Washington office.

The Concession Program Center (CPC), located in Denver, CO, provides nationwide assistance in a variety of subjects relating to the concession management program. The CPC does feasibility studies, calculates insurance replacement cost values, carries out concession planning as separate assignments or as part of overall park planning teams, and undertakes a variety of special projects required to serve park goals.

Program Management - Operating Programs and Practices

While the role of a concessioner must include well defined business-oriented goals and management, in order for the park/concessioner relationship to be successful, the concessioner must also adopt the goals of the park as its own and make the achievement of park objectives for visitor service and other matters part of the concessioner's objectives.

Concessioners and their staffs are important members of the park community. Park visitors often have more contact with and receive more information from concession employees than park staff. These contacts can have a significant effect on the quality of the visitor's experience. Concessioners often occupy important historic structures and have, through their operations, meaningful effects on park resources.

To manage all these effects, Concession Program Management in the National Park Service has developed operating programs and practices. These allow the Service to supervise concessioner activities in an orderly way and establish certain unique approaches to conducting hospitality and recreation services in the National Park System.

Resource Protection Considerations. The National Park Service expects its concessioners to join with the Service in fulfillment of its mission, and to give special attention in their operations to the preservation, conservation, and protection of park resources and the environment.

Routine business operations, educational activities and employee programs must be conducted in accordance with all applicable environmental laws, and in a manner and by such methods that minimize negative environmental impacts on the parks and that encourage others to do the same.

Issues and technologies change over time. The following provide some idea of the Service's current resource protection objectives.

1. Solid waste disposal is a major environmental issue as well as a costly problem. The concessioner will be expected to reduce, reuse, and recycle. The new concessioner should actively work to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the product and its packaging, and to recycle all materials possible. An approach that minimizes such trash and ensures recycling where possible is necessary.
2. Water and energy conservation must be practiced in daily operations and incorporated into the design and construction of both rehabilitated and new facilities.
3. Concessioner-operated underground and above-ground tanks for building and vehicle fuels, whether government or concessioner owned, must meet all of the requirements of Federal, state, and local law and regulation. Responsibilities include cleanup of spillage or leaks, demonstration of financial responsibility, and fulfillment of reporting requirements. The effect of vehicles and other operations on air quality is of concern to the National Park Service. Fuel and engine technology is evolving in ways that will benefit air quality. Concession operations should adapt their operations to such changes as they are proven to be reliable and effective.
5. Operations may be conducted in a natural area with a variety of wildlife. The new concessioner must conduct its operations under Service direction for mitigating human-wildlife interactions.

6. Employee orientation programs and development must genuinely emphasize the importance of the park's natural and cultural resources and the necessary consideration for them due from all employees.
7. The Integrated Pest Management Program ensures that use of chemicals to control plant and insect pests is strictly regulated to minimize such uses and that such applications are the last resort in control efforts. The concessioner must work with the park in implementation of this program in its operations and in the areas for which it is responsible.

The overall objective of Resource Protection is to conduct operations in a steadily evolving way oriented towards the use of efficient and cost-effective approaches that minimize negative impacts on our environment and to encourage others to do so too, for the same cost-effective and self-protective reasons.

Environmental Management Program. The Environmental Management Program provides park-specific information about the concessioner's role in providing its services in an environmentally sensitive manner. Environmental management programs include such topics as hazardous waste management, (etc.)

The successful offeror must submit a proposed initial environmental management program as part of the Proposal. A final program must be submitted to NPS for approval within 60 days after the effective date of the new concession contract. The approved program must be adhered to by the concessioner. It will be reviewed on no less than an annual basis.

Construction. Construction of all kinds should harmoniously integrate with the environment where it is located. Facilities that are cultural resources should be managed so as to maintain their intrinsic qualities through sustained conservation. Architectural style, design elements and construction materials should reflect the park and its history.

Plans and specifications for any and all construction and landscaping development on government-owned lands assigned to the new concessioner must be approved in writing by the National Park Service before the work may be started. Plans must be prepared in accordance with National Park Service standards. The National Park Service microfilms all plans for retention.

Construction codes to be followed are nationally applicable codes such as the Uniform Building Code and the National Fire Protection Association codes, including the National Fire Code, in the latest editions. Regional and local codes are followed where they set a higher standard than national codes or address unique issues. Even where park jurisdiction requires local codes to apply, higher standards in national codes will be used for concessioner construction.

The seismic safety standards to be applied to new buildings designed and constructed within the National Park Service System are:

1. 1991 International Conference of Building Officials Uniform Building Code.
2. 1992 Supplement to the Buildings Officials Conference of America National Building Code.
3. 1992 Amendments to the Southern Building Code Congress Standard Building Code.
4. State,, county, and local jurisdictions having specific seismic safety standards.

Interpretation. The National Park Service expects that its concessioners will, in appropriate ways, interpret park natural and cultural resources to park visitors and concession employees, with the objective of instilling in them an appreciation of the park area. Concessioner interpretive messages should include safety, local resource management issues and objectives, history of the area, and interpretive themes identified in the park's Interpretive Prospectus. These opportunities and responsibilities are more specifically identified in the contract and operating plan for this operation.

Rates For Services. Rates and prices charged are subject to prior approval of the National Park Service. Reasonableness and appropriateness of rates and charges will be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due allowances for length of season, provision for peak loads, accessibility and cost of labor and material, and type of patronage with consideration given to other factors deemed relevant (See PL 105-391). The National Park Service concession rate approval program identifies several methods by which comparable rates may be established. It is the responsibility of the regional director to approve the method used and the responsibility of the superintendent to approve rates.

To reduce government expenses, the concessioner will be required to provide reduced rates for lodging and transportation to government employees on official business. Reduced rates under this program may only be provided for lodging and transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. All other rates for all other goods and services are to be charged to all government employees and their dependents in the same manner as to general park visitors.

Equal Opportunity. The Service is interested in having its concession operations reflect, through its employees, the cultural and ethnic diversity of the area in which they operate and of the nation as a whole. The Service is also interested in having participation in the management of the new concession by minority and women professionals. The Service believes that a varied and diverse concession workforce will better serve the increasingly varied and diverse clientele that uses the Nation's national park areas. A program for minority and women employees that advances these goals is very desirable.

Facility and Service Accessibility. The concessioner will be required to comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities. Compliance with ADAAG meets all accessibility requirements under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act.

An offeror must demonstrate a commitment to full participation for persons with disabilities. This commitment must represent opportunities for both mainstreaming individuals into the normal use patterns of concession facilities as well as the willingness to provide specialized accommodation and programs.

The Service recognizes that there are significant variations among concession activities as to the possible range of accessibility and accommodation. However, each concessioner will be expected to handle accessibility issues and inquiries in a supportive and assisting manner that provides maximum opportunities for persons of all abilities.

Utilities. Where utility services are readily available, concessioners will be required to obtain them from local sources. In other circumstances, the National Park Service may furnish utilities to concessioners. Rates for services furnished by the National Park Service shall be based on actual operating costs, according to procedures established by the Director.

Maintenance Plan. The maintenance plan provides park-specific information about required maintenance. The park will describe the interaction of park maintenance activities with concessioner activities and will specify and describe any maintenance tasks unique to the particular park that must be performed by concessioners and those, if any, that will be the responsibility of the National Park Service.

The concessioner generally will be required to maintain, repair, and perform improvements on all assigned concession facilities, including cyclic maintenance, ground maintenance, landscaping, and all necessary "housekeeping" activities associated with the concession operation, to the satisfaction of the National Park Service. The National Park Service, in consultation with the concessioner, will determine the specific maintenance responsibilities and establish priorities and projected completion dates.

The maintenance plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or Service policy.

The initial maintenance plan is Exhibit H to the contract. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Operating Plan. The operating plan includes such details about the operations as are necessary for the concessioner and the National Park Service to operate smoothly together, and provides the concessioner with information as to what specific operating practices are considered satisfactory in the circumstances of a particular park.

Operating plans include such things as hours of operation, scope and quality of service, management information, lost and found procedures, reservations, advance deposits, cancellations and refund policy, convention policy, rates, safety, sanitation, security, and health care, concession employees and employment, complaint review process, prior notification of changes in key management staff, and other areas of concern. The operating plan is initiated at the park level and signed by the park superintendent. Typically, superintendents will ask concessioners to consult on the content of such plans. Such plans may not alter provisions in the body of the contract document or Service policy.

The initial operating plan is an exhibit to the contract. It will be reviewed on no less than an annual basis, and changes will be made as determined appropriate by the National Park Service.

Sale of Souvenirs and Handicrafts. The selection and sale of gifts, souvenirs, and handicrafts in areas administered by the National Park Service is restricted in certain ways by National Park Service policies. The selection of items is limited to those that are appropriate for the public use and appreciation of the park. The sale of appropriate handicrafts associated with or interpretive of an area is especially encouraged. The concessioner will work with the park and its interpretive staff to determine what sorts of merchandise are most appropriate for the park area.

Insurance. The proposed contract requires the concessioner to insure any buildings, structures, equipment, furnishings and betterments, and merchandise used in the operation. In addition, the concessioner must carry liability insurance adequate for the types of activities it conducts.

The contract requires the new concessioner to purchase and maintain various types of insurance. Minimum coverage limits, as required, are provided in the Appendix.

Preference in the Award of a New Contract. Under the National Park Service Concessions Management Improvement Act of 1998, certain existing satisfactory concessioners are entitled to a preference in the award of certain new concession contracts. Specifically, concessioners with annual gross receipts of less than \$500,000 and all concessioners who are solely authorized to provide outfitting and guide services may exercise this right under certain conditions. The scope of this preference is further described by National Park Service regulations (36 CFR Part 51).

Sub-Concessioners. By policy, the NPS discourages subcontracting. Subcontracting is not essential to providing quality service to the public and, therefore, the new concession contract prohibits subconcessioners.

Historic Preservation and the National Register of Historic Places. Some facilities used by concessioners are on or may be eligible for the National Register of Historic Places. These are required to be maintained in accordance with the Secretary's Standards for Historic Preservation. This can be more time consuming and expensive than operations in nonhistoric buildings.

If such facilities will be used by the concessioner under this contract, requirements will be more fully described in the applicable contract. The preferred approach is to use a Historic Structures Report as a source for significance, and a Historic Structure Preservation Guide to become aware of maintenance techniques and standards. If such documents do not exist for these facilities, more detailed project consultation will be required prior to working on the affected buildings. Carrying out such maintenance requires specially-trained maintenance staff.

Compliance with Federal, State and Local Laws. Concessioners operate on Federal land but within the jurisdictional framework established by the application of park jurisdiction. Federal statutes apply to concession operations. State and local laws and regulations may also apply.

Concessioner Risk Management Program. The concessioner will develop, maintain and implement a documented Risk Management (Safety) Program. This written program describes procedures, policies and documentation for a process to minimize incidents and accidents that will affect the visitor, concession employees and the facilities. The program shall include the following elements appropriate to the size and scope of the required service:

- a. Management's Policy Statement, Duties, Employee's Responsibilities, and Administration.
- b. Inspection and Abatement
- c. Accident Investigation and Reporting
- d. Safety/Health Committee
- e. Training
- f. Emergency Procedures

Program Management - Financial Programs and Practices

The intention of the National Park Service is to contract with private businesses and individuals to conduct concession activities that are necessary to achieve park goals rather than to have the government conduct those activities directly. The National Park Service requires the payment of a franchise fee based on the probable value of the opportunity provided by the government.

Concessioner Pays Operating Costs. The costs of operation will be covered by the concessioner.

Real Property in a Park Belongs to the National Park Service. If real property improvements are made, the title to them will belong to the United States. However, under the terms of the applicable Contract, the United States may have an obligation to compensate a concessioner in the future for those real property improvements. Under new concession contracts, this obligation to compensate is referred to in the contract as "leasehold surrender interest."

Real Property Outside the Park Belongs to the Concessioner.

Concessioners who invest in real property outside of a park area for the purposes of supporting in-park operations are not obliged to sell that property to any incoming concessioner. The government will not compensate concessioners for such property or require any incoming operator to purchase such property.

Personal Property Belongs to the Concessioner. Concessioners, not the government, are the owners of most types of personal property. Under new concession contracts, the government will not require any incoming concessioner to purchase such personal property.

Businesses May Not Be Sold Without Approval. Concession contracts may not be sold or encumbered without the prior approval of the National Park Service. Policies and procedures are described in 36 CFR, Part 51, Subpart J. Among other matters, the National Park Service is required to make certain findings before approving a sale, transfer, or encumbrance.

No Guarantee of Profit. There is no guarantee of any profit over the term of a concession contract or of a profit in any given year. It is the responsibility of the offeror to assure itself that the terms of its offer provide it a reasonable opportunity for profit.

Concessioner Review Program. The regional director, through the park superintendent and his/her designated representatives, will maintain a continuing review of concession operations and management. This continuing review will determine if the concessioner is complying with all provisions of the contract and will evaluate the concessioner's operation to determine if satisfactory performance as required by Public Law 105-391 is being provided. This concessioner review program will include, but not be limited to:

- The quality of the service rendered to the public;
- The prices that are charged the public;
- The condition of the premises;

- The appearance and conduct of employees;
- The degree to which facilities are properly maintained and repaired as required by the particular concession authorization;
- The nondiscrimination policies of the concessioner with relation to both employment and service to the public;
- Compliance with the concessioner Risk Management Program;
- Compliance with U.S. Public Health Service standards and requirements and state and local health codes that may be applicable;
- Compliance with practices that foster a safe environment for the public; and
- Compliance with the various administrative and financial requirements of the contract, including any applicable construction program.
- Compliance with the Environmental Management Program

Periodic written evaluations will be prepared by the applicable park, usually two or three times a year, following the procedures and requirements of the National Park Service concessioner review program. From these evaluations an annual rating is established. Failure to operate in a manner satisfactory under the requirements of the concessioner review program may be cause for termination of a concession authorization.

PUBLIC LAW 105-391

P.L. 105-391
November 13, 1998

TITLE IV--NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT

SEC. 401. SHORT TITLE.

This title may be cited as the "National Park Service Concessions Management Improvement Act of 1998".

SEC. 402. CONGRESSIONAL FINDINGS AND STATEMENT OF POLICY.

(a) **FINDINGS.**--In furtherance of the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), which directs the Secretary to administer units of the National Park System in accordance with the fundamental purpose of conserving their scenery, wildlife, and natural and historic objects, and providing for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations, the Congress hereby finds that the preservation and conservation of park resources and values requires that such public accommodations, facilities, and services as have to be provided within such units should be provided only under carefully controlled safeguards against unregulated and indiscriminate use, so that--

- (1) visitation will not unduly impair these resources and values; and
- (2) development of public accommodations, facilities, and services within such units can best be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of such units.

(b) **POLICY.**--It is the policy of the Congress that the development of public accommodations, facilities, and services in units of the National Park System shall be limited to those accommodations, facilities, and services that--

- (1) are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located; and
- (2) are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

SEC. 403. AWARD OF CONCESSIONS CONTRACTS

In furtherance of the findings and policy stated in section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concessions contracts to authorize a person, corporation, or other entity to provide accommodations, facilities, and services to visitors to units of the National Park System. Such concessions contracts shall be awarded as follows:

(1) **COMPETITIVE SELECTION PROCESS.**--Except as otherwise provided in this section, all proposed concessions contracts shall be awarded by the Secretary to the person, corporation, or other entity submitting the best proposal, as determined by the Secretary through a competitive selection process. Such competitive process shall include simplified procedures for small, individually-owned, concessions contracts.

(2) **SOLICITATION OF PROPOSALS.**--Except as otherwise provided in this section, prior to awarding a new concessions contract (including renewals or extensions of existing concessions contracts) the Secretary shall publicly solicit proposals for the concessions contract and, in connection with such solicitation, the Secretary shall prepare a prospectus and shall publish notice of its availability at least once in local or national newspapers or trade publications, and/or the Commerce Business Daily, as appropriate, and shall make the prospectus available upon request to all interested parties.

(3) **PROSPECTUS.**--The prospectus shall include the following information:

(A) The minimum requirements for such contract as set forth in paragraph (4).

(B) The terms and conditions of any existing concessions contract relating to the services and facilities to be provided, including all fees and other forms of compensation provided to the United States by the concessioner.

(C) Other authorized facilities or services which may be provided in a proposal.

(D) Facilities and services to be provided by the Secretary to the concessioner, if any, including public access, utilities, and buildings.

(E) An estimate of the amount of compensation, if any, due an existing concessioner from a new concessioner under the terms of a prior concessions contract.

(F) A statement as to the weight to be given to each selection factor identified in the prospectus and the relative importance of such factors in the selection process.

(G) Such other information related to the proposed concessions operation as is provided to the Secretary pursuant to a concessions contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

(H) Where applicable, a description of a preferential right to the renewal of the proposed concessions contract held by an existing concessioner as set forth in paragraph (7).

(4) **MINIMUM REQUIREMENTS.**--(A) No proposal shall be considered which fails to meet the minimum requirements as determined by the Secretary. Such minimum requirements shall include the following:

(i) The minimum acceptable franchise fee or other forms of consideration to the Government.

(ii) Any facilities, services, or capital investment required to be provided by the concessioner.

(iii) Measures necessary to ensure the protection, conservation, and preservation of resources of the unit of the National Park System.

(B) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation, or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(C) If all proposals submitted to the Secretary either fail to meet the minimum requirements or are rejected by the Secretary, the Secretary shall establish new minimum contract requirements and re-initiate the competitive selection process pursuant to this section.

(D) The Secretary may not execute a concessions contract which materially amends or does not incorporate the proposed terms and conditions of the concessions contract as set forth in the applicable prospectus. If proposed material amendments or changes are considered appropriate by the Secretary, the Secretary shall resolicit offers for the concessions contract incorporating such material amendments or changes.

(5) **SELECTION OF THE BEST PROPOSAL.**--(A) In selecting the best proposal, the Secretary shall consider the following principal factors:

(i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(ii) The experience and related background of the person, corporation, or entity submitting the proposal, including the past performance and expertise of such person, corporation or entity in providing the same or similar facilities or services.

(iii) The financial capability of the person, corporation, or entity submitting the proposal.

(iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the unit of the

National Park System and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

(C) In developing regulations to implement this title, the Secretary shall consider the extent to which plans for employment of Indians (including Native Alaskans) and involvement of businesses owned by Indians, Indian tribes, or Native Alaskans in the operation of a concession, contracts should be identified as a factor in the selection of a best proposal under this section.

(6) CONGRESSIONAL NOTIFICATION.--The Secretary shall submit any

proposed concessions contract with anticipated annual gross receipts in excess of \$5,000,000 or a duration of more than 10 years to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary shall not award

any such proposed contract until at least 60 days subsequent to the notification of both committees.

(7) PREFERENTIAL RIGHT OF RENEWAL.--(A) Except as provided in subparagraph (B), the Secretary shall not grant a concessioner a preferential right to renew a concessions contract, or any other form of preference to a concessions contract.

(B) The Secretary shall grant a preferential right of renewal to an existing concessioner with respect to proposed renewals of the categories of concessions contracts described by paragraph (8), subject to the requirements of that paragraph.

(C) As used in this title, the term "preferential right of renewal" means that the Secretary, subject to a determination by the Secretary that the facilities or services authorized by a prior contract continue to be necessary and appropriate within the meaning of section 402, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concessions contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract.

(D) A concessioner which successfully exercises a preferential right of renewal in accordance with the requirements of this title shall be entitled to award of the proposed new concessions contract to which such preference applies.

(8) OUTFITTER AND GUIDE SERVICES AND SMALL CONTRACTS.—

(A) The provisions of paragraph (7) shall apply only to the following:

(i) Subject to subparagraph (B), outfitting and guide concessions contracts.

(ii) Subject to subparagraph (C), concessions contracts with anticipated annual gross receipts under \$500,000.

(B) For the purposes of this title, an "outfitting and guide concessions contract" means a concessions contract which solely authorizes the provision of specialized backcountry outdoor recreation guide services which require the employment of specially trained and experienced guides to accompany park visitors in the backcountry so as to provide a safe and enjoyable experience for visitors who otherwise may not have the skills and equipment to engage in such activity. Outfitting and guide concessioners, where otherwise qualified, include concessioners which provide guided river running, hunting, fishing, horseback, camping, and mountaineering experiences. An outfitting and guide concessioner is entitled to a preferential right of renewal under this title only if--

(i) the contract with the outfitting and guide concessioner does not grant the concessioner any interest, including any leasehold surrender interest or possessory interest, in capital improvements on lands owned by the United States within a unit of the National Park System, other than a capital improvement constructed by a concessioner pursuant to the terms of a concessions contract prior to the date of the enactment of this title or constructed or owned by a concessioner or his or her predecessor before the subject land was incorporated into the National Park System;

(ii) the Secretary determines that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(iii) the concessioner has submitted a responsive proposal for a proposed new contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(C) A concessioner that holds a concessions contract that the Secretary estimates will result in gross annual receipts of less than \$500,000 if renewed shall be entitled to a preferential right of renewal under this title if--

(i) the Secretary has determined that the concessioner has operated satisfactorily during the term of the contract (including any extension thereof); and

(ii) the concessioner has submitted a responsive proposal for a proposed new concessions contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4).

(9) **NEW OR ADDITIONAL SERVICES.**--The Secretary shall not grant a preferential right to a concessioner to provide new or additional services in a unit of the National Park System.

(10) **SECRETARIAL AUTHORITY.**--Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concessions contract or to establish its terms and conditions in furtherance of the policies expressed in this title.

(11) **EXCEPTIONS.**--Notwithstanding the provisions of this section, the Secretary may award, without public solicitation, the following:

(A) A temporary concessions contract or an extension of an existing concessions contract for a term not to exceed 3 years in order to avoid interruption of services to the public at a unit of the National Park System, except that prior to making such an award, the Secretary shall take all reasonable and appropriate steps to consider alternatives to avoid such interruption.

(B) A concessions contract in extraordinary circumstances where compelling and equitable considerations require the award of a concessions contract to a particular party in the public interest. Such award of a concessions contract shall not be made by the Secretary until at least 30 days after publication in the Federal Register of notice of the Secretary's intention to do so and the reasons for such action, and submission of notice to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

SEC. 404. TERM OF CONCESSIONS CONTRACTS.

A concessions contract entered into pursuant to this title shall generally be awarded for a term of 10 years or less. However, the Secretary may award a contract for a term of up to 20 years if the Secretary determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term.

SEC. 405. PROTECTION OF CONCESSIONER INVESTMENT.

(a) **LEASEHOLD SURRENDER INTEREST UNDER NEW CONCESSIONS CONTRACTS.**--On or after the date of the enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concessions contract shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(1) A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concessions contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement.

(2) A leasehold surrender interest--

(A) may be pledged as security for financing of a capital improvement or the acquisition of a concessions contract when approved by the Secretary pursuant to this title;

(B) shall be transferred by the concessioner in connection with any transfer of the concessions contract and may be relinquished or waived by the concessioner; and

(C) shall not be extinguished by the expiration or other termination of a concessions contract and may not be taken for public use except on payment of just compensation.

(3) The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) in the same percentage increase (or decrease) as the percentage increase (or decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of the value of the leasehold surrender interest, less depreciation of the capital improvement as evidenced by the condition and prospective serviceability in comparison with a new unit of like kind.

(4) Effective 9 years after the date of the enactment of this Act, the Secretary may provide, in any particular new concession contract the Secretary estimates will have a leasehold surrender interest of more than \$10,000,000, that the value of any leasehold surrender interest in a capital improvement shall be based on either (A) a reduction on an annual basis, in

equal portions, over the same number of years as the time period associated with the straight line depreciation of the initial value (construction

cost of the capital improvement), as provided by applicable Federal income tax laws and regulations in effect on the day before the date of the enactment of this Act or (B) such alternative formula that is consistent with the objectives of this title. The Secretary may only use such an alternative formula if the Secretary determines, after scrutiny of the financial and other circumstances involved in this particular concession contract (including providing notice in the Federal Register and opportunity for comment), that such alternative formula is, compared to the standard method of determining value provided for in paragraph (3), necessary in order to provide a fair return to the Government and to foster competition for the new

contract by providing a reasonable opportunity to make a profit under the new contract. If no responsive offers are received in response to a solicitation that includes such an alternative formula, the concession opportunity shall be resolicited with the leasehold surrender interest value as described in paragraph (3).

(5) Where a concessioner, pursuant to the terms of a concessions contract, makes a capital improvement to an existing capital improvement in

which the concessioner has a leasehold surrender interest, the cost of such additional capital improvement shall be added to the then current value of the concessioner's leasehold surrender interest.

(b) SPECIAL RULE FOR EXISTING POSSESSORY INTEREST.--

(1) A concessioner which has obtained a possessory interest as defined pursuant to Public Law 89-249 (commonly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.), as in effect on the day before the date of the enactment of this Act, under the terms of a concessions contract entered into before that date shall, upon the expiration

or termination of such contract, be entitled to receive compensation for such

possessory interest improvements in the amount and manner as described by such concessions contract. Where such a possessory interest is not described in the existing contract, compensation of possessory interest shall

be determined in accordance with the laws in effect on the day before the date of enactment of this Act.

(2) In the event such prior concessioner is awarded a new concessions contract after the effective date of this title replacing an existing concessions contract, the existing concessioner shall, instead of directly receiving such possessory interest compensation, have a leasehold surrender interest in its

existing possessory interest improvements under the terms of the new contract and shall carry over as the initial value of such leasehold surrender interest (instead of construction cost) an amount equal to the value of the existing possessory interest as of the termination date of the previous contract. In the event of a dispute between the concessioner and the Secretary as to the value of such possessory interest, the matter shall be resolved through binding arbitration.

(3) In the event that a new concessioner is awarded a concessions contract and is required to pay a prior concessioner for possessory interest in prior improvements, the new concessioner shall have a leasehold surrender interest in such prior improvements and the initial value in such leasehold surrender interest (instead of construction cost), shall be an amount equal to the value of the existing possessory interest as of the termination date of the previous contract.

(c) TRANSITION TO SUCCESSOR CONCESSIONER.--Upon expiration or termination of a concessions contract entered into after the effective date of this title, a concessioner shall be entitled under the terms of the concessions contract to receive from the United States or a successor concessioner the value

of any leasehold surrender interest in a capital improvement as of the date of such expiration or termination. A successor concessioner shall have a leasehold

surrender interest in such capital improvement under the terms of a new contract and the initial value of the leasehold surrender interest in such capital improvement (instead of construction cost) shall be the amount of money the new concessioner is required to pay the prior concessioner for its leasehold surrender interest under the terms of the prior concessions contract.

(d) **TITLE TO IMPROVEMENTS.**--Title to any capital improvement constructed by a concessioner on lands owned by the United States in a unit of the National Park System shall be vested in the United States.

(e) **DEFINITIONS.**--For purposes of this section:

(1) **CONSUMER PRICE INDEX.**--The term "Consumer Price Index" means the "Consumer Price Index--All Urban Consumers" published by the Bureau of Labor Statistics of the Department of Labor, unless such index is not published, in which case another regularly published cost-of-living index approximating the Consumer Price Index shall be utilized by the Secretary; and

(2) **CAPITAL IMPROVEMENT.**--The term "capital improvement" means a structure, fixture, or nonremovable equipment provided by a concessioner pursuant to the terms of a concessions contract and located on lands of the United States within a unit of the National Park System.

(f) **SPECIAL REPORTING REQUIREMENT.**-- Not later than 7 years after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives containing a complete analysis of the concession program as well as--

(1) an assessment of competition in the solicitation of prospectuses, fair and/or increased return to the Government, and improvement of concession

facilities and infrastructure; and

(2) an assessment of any problems with the management and administration of the concession program that are a direct result of the implementation of the provisions of this title.

SEC. 406. REASONABLENESS OF RATES.

(a) **IN GENERAL.**--Each concessions contract shall permit the concessioner to set reasonable and appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) **APPROVAL BY SECRETARY REQUIRED.**--A concessioner's rates and charges to the public shall be subject to approval by the Secretary. The approval process utilized by the Secretary shall be as prompt and as unburdensome to the concessioner as possible and shall rely on market forces to establish reasonableness of rates and charges to the maximum extent practicable. The Secretary shall approve rates and charges that the Secretary determines to be reasonable and appropriate. Unless otherwise provided in the contract, the reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions, with due consideration to the following factors and other factors deemed relevant by the Secretary: length of season, peakloads, average percentage of occupancy, accessibility, availability and costs of labor and materials, and type of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking into account the factors referred to in the preceding sentence.

(c) **IMPLEMENTATION OF RECOMMENDATIONS.**--Not later than 6 months after receiving recommendations from the Advisory Board established under section 409(a) regarding concessioner rates and charges to the public, the Secretary shall implement the recommendations or report to the Congress the reasons for not implementing the recommendations.

SEC. 407. FRANCHISE FEES.

(a) **IN GENERAL.**--A concessions contract shall provide for payment to the government of a franchise fee or such other monetary consideration as determined by the Secretary, upon consideration of the probable value to the concessioner of the privileges granted by the particular contract involved. Such probable value shall be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate services for visitors at reasonable rates.

(b) **AMOUNT OF FRANCHISE FEE.**--The amount of the franchise fee or other monetary consideration paid to the United States for the term of the concessions contract shall be specified in the concessions contract and may only be modified to reflect extraordinary unanticipated changes from the conditions anticipated as of the effective date of the contract. The Secretary shall include in concessions contracts with a term of more than 5 years a provision which allows reconsideration of the franchise fee at the request of the Secretary or the concessioner in the event of such extraordinary unanticipated changes. Such provision shall provide for binding arbitration in the event that the Secretary and

the concessioner are unable to agree upon an adjustment to the franchise fee in these circumstances.

(c) **SPECIAL ACCOUNT.**--All franchise fees (and other monetary consideration) paid to the United States pursuant to concessions contracts shall be deposited into a special account established in the Treasury of the United States. Twenty percent of the funds deposited in the special account shall be available for expenditure by the Secretary, without further appropriation, to support activities throughout the National Park System regardless of the unit of the National Park System in which the funds were collected. The funds deposited into the special account shall remain available until expended.

(d) **SUBACCOUNT FOR EACH UNIT.**--There shall be established within the special account required under subsection (c) a subaccount for each unit of the National Park System. Each subaccount shall be credited with 80 percent of the franchise fees (and other monetary consideration) collected at a single unit of the National Park System under concessions contracts. The funds credited to the subaccount for a unit of the National Park System shall be available for expenditure by the Secretary, without further appropriation, for use at the unit for visitor services and for purposes of funding high-priority and urgently necessary resource management programs and operations. The funds credited to a subaccount shall remain available until expended.

SEC. 408. TRANSFER OF CONCESSIONS CONTRACTS.

(a) **APPROVAL OF THE SECRETARY.**--No concessions contract or leasehold surrender interest may be transferred, assigned, sold, or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary.

(b) **CONDITIONS.**--The Secretary shall approve a transfer or conveyance described in subsection (a) unless the Secretary finds that--

(1) the individual, corporation or entity seeking to acquire a concessions contract is not qualified or able to satisfy the terms and conditions of the concessions contract;

(2) such transfer or conveyance would have an adverse impact on (A) the protection, conservation, or preservation of the resources of the unit of the National Park System or (B) the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

(c) **TRANSFER TERMS.**--The terms and conditions of any contract under this section shall not be subject to modification or open to renegotiation by the Secretary because of a transfer or conveyance described in subsection (a), unless such transfer or conveyance would have an adverse impact as described in paragraph (2) of subsection (b).

SEC. 409. NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT ADVISORY BOARD.

(a) **ESTABLISHMENT.**--There is hereby established a National Park Service Concessions Management Advisory Board (in this title referred to as the "Advisory Board") whose purpose shall be to advise the Secretary and National Park Service on matters relating to management of concessions in the National Park System.

(b) **DUTIES.**--

(1) **ADVICE.**--The Advisory Board shall advise on each of the following:

(A) Policies and procedures intended to assure that services and facilities provided by concessioners are necessary and appropriate, meet acceptable standards at reasonable rates with a minimum of impact on park resources and values, and provide the concessioners with a reasonable opportunity to make a profit.

(B) Ways to make National Park Service concessions programs and procedures more cost effective, more process efficient, less burdensome, and timelier.

(2) **RECOMMENDATIONS.**--The Advisory Board shall make recommendations to the Secretary regarding each of the following:

(A) National Park Service contracting with the private sector to conduct appropriate elements of concessions management and providing recommendations to make more efficient, less burdensome, and timelier the review or approval of concessioner rates and charges to the public.

(B) The nature and scope of products which qualify as Indian, Alaska Native, and Native Hawaiian handicrafts within this meaning of this title.

(C) The allocation of concession fees. The initial recommendations under subparagraph (A) relating to rates and charges shall be submitted to the Secretary not later than one year after the first meeting of the Board.

(3) **ANNUAL REPORT.**--The Advisory Board, commencing with the first anniversary of its initial meeting, shall provide an annual report on its activities to the Committee on Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

(c) **ADVISORY BOARD MEMBERSHIP.**--Members of the Advisory Board shall be appointed on a staggered basis by the Secretary for a term not to exceed 4 years and shall serve at the pleasure of the Secretary. The Advisory Board shall be comprised of not more than seven individuals appointed from

among citizens of the United States not in the employment of the Federal Government and not in the employment of or having an interest in a National Park Service concession. Of the seven members of the Advisory Board--

(1) one member shall be privately employed in the hospitality industry and have both broad knowledge of hotel or food service management and experience in the parks and recreation concessions business;

(2) one member shall be privately employed in the tourism industry;

(3) one member shall be privately employed in the accounting industry;

(4) one member shall be privately employed in the outfitting and guide industry;

(5) one member shall be a State government employee with expertise in park concession management;

(6) one member shall be active in promotion of traditional arts and crafts; and

(7) one member shall be active in a nonprofit conservation organization involved in parks and recreation programs.

(d) **TERMINATION.**--The Advisory Board shall continue to exist until December 31, 2008. In all other respects, it shall be subject to the provisions of the Federal Advisory Committee Act.

(e) **SERVICE ON ADVISORY BOARD.**--Service of an individual as a member of the Advisory Board shall not be considered as service or employment

bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Advisory Board shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or other comparable provisions of Federal law.

SEC. 410. CONTRACTING FOR SERVICES.

(a) **CONTRACTING AUTHORIZED.**--(1) To the maximum extent practicable, the Secretary shall contract with private entities to conduct or assist in those elements of the management of the National Park Service concessions program considered by the Secretary to be suitable for non-Federal performance. Such management elements include each of the following:

(A) Health and safety inspections.

(B) Quality control of concessions operations and facilities.

(C) Strategic capital planning for concessions facilities.

(D) Analysis of rates and charges to the public.

(2) The Secretary may also contract with private entities to assist the

Secretary with each of the following:

(A) Preparation of the financial aspects of prospectuses for National Park Service concessions contracts.

(B) Development of guidelines for a national park system capital improvement and maintenance program for all concession occupied facilities.

(C) Making recommendations to the Director of the National Park Service regarding the conduct of annual audits of concession fee expenditures.

(b) **OTHER MANAGEMENT ELEMENTS.**--The Secretary shall also consider, taking into account the recommendations of the Advisory Board, contracting out other elements of the concessions management program, as appropriate.

(c) **CONDITION.**--Nothing in this section shall diminish the governmental responsibilities and authority of the Secretary to administer concessions contracts and activities pursuant to this title and the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.). The Secretary reserves the right to make the final decision or contract approval on contracting services dealing with the management of the National Park Service concessions program under this section.

SEC. 411. MULTIPLE CONTRACTS WITHIN A PARK.

If multiple concessions contracts are awarded to authorize concessioners to provide the same or similar outfitting, guiding, river running, or other similar services at the same approximate location or resource within a specific national park, the Secretary shall establish a comparable franchise fee structure for all such same or similar contracts, except that the terms and conditions of any existing concessions contract shall not be subject to modification or open to renegotiation by the Secretary because of an award of a new contract at the same approximate location or resource.

SEC. 412. SPECIAL RULE FOR TRANSPORTATION CONTRACTING SERVICES.

Notwithstanding any other provision of law, a service contract entered into by the Secretary for the provision solely of transportation services in a unit of the National Park System shall be no more than 10 years in length, including a base period of 5 years and annual extensions for an additional 5-year period based on satisfactory performance and approval by the Secretary.

SEC. 413. USE OF NONMONETARY CONSIDERATION IN CONCESSIONS CONTRACTS.

Section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), relating to the leasing of buildings and properties of the United States, shall not apply to contracts awarded by the Secretary pursuant to this title.

SEC. 414. RECORDKEEPING REQUIREMENTS.

(a) **IN GENERAL.**--Each concessioner shall keep such records as the Secretary may prescribe to enable the Secretary to determine that all terms of the concessions contract have been and are being faithfully performed, and the Secretary and any duly authorized representative of the Secretary shall, for the purpose of audit and examination, have access to such records and to other books, documents, and papers of the concessioner pertinent to the contract and all terms and conditions thereof.

(b) **ACCESS TO RECORDS.**--The Comptroller General or any duly authorized representative of the Comptroller General shall, until the expiration of 5 calendar years after the close of the business year of each concessioner or subconcessioner, have access to and the right to examine any pertinent books, papers, documents and records of the concessioner or subconcessioner related to the contract or contracts involved.

SEC. 415. REPEAL OF NATIONAL PARK SERVICE CONCESSIONS POLICY ACT.

(a) **REPEAL.**--Public Law 89-249 (commonly known as the National Park Service Concessions Policy Act; 16 U.S.C. 20 et seq.) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority.

(b) **CONFORMING AMENDMENTS.**--(1) The fourth sentence of section 3 of the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 3), is amended--

(A) by striking all through "no natural" and inserting "No natural,"; and

(B) by striking the last proviso in its entirety.

(2) Section 12 of Public Law 91-383 (commonly known as the National Park System General Authorities Act; 16 U.S.C. 1a-7) is amended by striking subsection (c).

(3) The second paragraph under the heading "National Park Service" in the Act of July 31, 1953 (67 Stat. 261, 271), is repealed.

(c) **ANILCA.**--Nothing in this title amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

SEC. 416. PROMOTION OF THE SALE OF INDIAN, ALASKA NATIVE, NATIVE SAMOAN, AND NATIVE HAWAIIAN HANDICRAFTS.

(a) **IN GENERAL.**--Promoting the sale of authentic United States Indian, Alaskan Native, Native Samoan, and Native Hawaiian handicrafts relating to the cultural, historical, and geographic characteristics of units of the National Park System is encouraged, and the Secretary shall ensure that there is a continuing effort to enhance the handicraft trade where it exists and establish the trade in appropriate areas where such trade currently does not exist.

(b) **EXEMPTION FROM FRANCHISE FEE.**--In furtherance of these purposes, the revenue derived from the sale of United States Indian, Alaska Native, Native Samoan, and Native Hawaiian handicrafts shall be exempt from any franchise fee payments under this title.

SEC. 417. REGULATIONS.

As soon as practicable after the effective date of this title, the Secretary shall promulgate regulations appropriate for its implementation. Among other matters, such regulations shall include appropriate provisions to ensure that concession services and facilities to be provided in a unit of the National Park System are not segmented or otherwise split into separate concessions contracts for the purposes of seeking to reduce anticipated annual gross receipts of a concessions contract below \$500,000. The Secretary shall also promulgate regulations which further define the term "United States Indian, Alaskan Native, and Native Hawaiian handicrafts" for the purposes of this title.

SEC. 418. COMMERCIAL USE AUTHORIZATIONS.

(a) **IN GENERAL.**--To the extent specified in this section, the Secretary, upon request, may authorize a private person, corporation, or other entity to provide services to visitors to units of the National Park System through a commercial use authorization. Such authorizations shall not be considered as concessions contracts pursuant to this title nor shall other sections of this title be applicable to such authorizations except where expressly so stated.

(b) **CRITERIA FOR ISSUANCE OF AUTHORIZATIONS.--**

(1) **REQUIRED DETERMINATIONS.--**The authority of this section may be used only to authorize provision of services that the Secretary determines will have minimal impact on resources and values of the unit of the National Park System and are consistent with the purpose for which the unit was established and with all applicable management plans and park policies and regulations.

(2) **ELEMENTS OF AUTHORIZATION.--**The Secretary shall--
authorization under this section, such fees to remain available without

(A) require payment of a reasonable fee for issuance of an
further appropriation to be used, at a minimum, to recover associated
management and administrative costs;

(B) require that the provision of services under such an authorization
be accomplished in a manner consistent to the highest practicable degree

with the preservation and conservation of park resources and values;

(C) take appropriate steps to limit the liability of the United States
arising from the provision of services under such an authorization; and

(D) have no authority under this section to issue more authorizations
than are consistent with the preservation and proper management of park

resources and values, and shall establish such other conditions for
issuance of such an authorization as the Secretary determines
appropriate for the protection of visitors, provision of adequate and
appropriate visitor services, and protection and proper management of
the resources and values of the park.

(c) **LIMITATIONS.--**Any authorization issued under this section shall
be limited to—

(1) commercial operations with annual gross receipts of not more than
\$25,000 resulting from services originating and provided solely within a unit
of the National Park System pursuant to such authorization;

(2) the incidental use of resources of the unit by commercial operations
which provide services originating and terminating outside of the boundaries

of the unit; or

(3) such uses by organized children's camps, outdoor clubs and nonprofit
institutions (including back country use) and such other uses as the
Secretary determines appropriate. Nonprofit institutions are not required to
obtain commercial use authorizations unless taxable income is derived by
the institution from the authorized use.

(d) **PROHIBITION ON CONSTRUCTION.--**An authorization issued under
this section shall not provide for the construction of any structure, fixture, or

improvement on federally-owned lands within the boundaries of a unit of the National Park System.

(e) **DURATION.**--The term of any authorization issued under this section shall not exceed 2 years. No preferential right of renewal or similar provisions for renewal shall be granted by the Secretary.

(f) **OTHER CONTRACTS.**--A person, corporation, or other entity seeking or obtaining an authorization pursuant to this section shall not be precluded from also submitting proposals for concessions contracts.

SEC. 419. SAVINGS PROVISION.

(a) **Treatment of Glacier Bay Concession Permits Prospectus.**--Nothing contained in this title shall authorize or require the Secretary to withdraw, revise, amend, modify, or reissue the February 19, 1998, Prospectus Under Which Concession Permits Will be Open for Competition for the Operation of Cruise Ship Services Within Glacier Bay National Park and Preserve (in this section referred to as the "1998 Glacier Bay Prospectus"). The award of concession permits pursuant to the 1998 Glacier Bay Prospectus shall be under provisions of existing law at the time the 1998 Glacier Bay Prospectus was issued.

(b) **PREFERENTIAL RIGHT OF RENEWAL.**--Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits covering cruise ship entries for which a preferential right of renewal existed prior to the effective date of this title, shall provide for such cruise ship entries a preferential right of renewal, as described in subparagraphs (C) and (D) of section 403(7). Any Glacier Bay concession permit awarded under the authority contained in this subsection shall expire by December 31, 2009.

Approved November 13, 1998.

LEGISLATIVE HISTORY--S. 1693:

HOUSE REPORTS: No. 105-767 (Comm. on Resources).

SENATE REPORTS: No. 105-202 (Comm. on Energy and Natural Resources).

CONGRESSIONAL RECORD, Vol. 144 (1998):

June 11, considered and passed Senate.

Oct. 13, considered and passed House, amended.

Oct. 14, Senate concurred in House amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 34 (1998):

Nov. 13, Presidential statement.

36 CFR PART 51

36 CFR Part 51
EFFECTIVE DATE: May 17, 2000

PART 51--CONCESSION CONTRACTS

Subpart A--Authority and Purpose

Sec.

51.1 What does this part cover?

51.2 What is the policy underlying concessions contracts?

Subpart B--General Definitions

51.3 How are terms defined in this part?

Subpart C--Solicitation, Selection and Award Procedures

51.4 How will the Director invite the general public to apply for the award of a concession contract?

51.5 What information will the prospectus include?

51.6 Will a concession contract be developed for a particular potential offeror?

51.7 How will information be provided to a potential offeror after the prospectus is issued?

51.8 Where will the Director publish the notice of availability of the prospectus?

51.9 How do I get a copy of the prospectus?

51.10 How long will I have to submit my proposal?

51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

51.13 When will the Director determine if proposals are responsive?

51.14 What happens if no responsive proposals are submitted?

51.15 May I clarify, amend or supplement my proposal after it is submitted?

51.16 How will the Director evaluate proposals and select the best one?

51.17 What are the selection factors?

51.18 When must the Director reject a proposal?

51.19 Must the Director award the concession contract that is set forth in the prospectus?

51.20 Does this part limit the authority of the Director?

51.21 When must the selected offeror execute the concession contract?

51.22 When may the Director execute the concession contract?

Subpart D--Non-Competitive Award of Concession Contracts

51.23 May the Director extend an existing concession contract without a public solicitation?

51.24 May the Director award a temporary concession contract without a public solicitation?

51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Subpart E--Right of Preference to a New Concession Contract

51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

51.28 When will the Director determine whether a concessioner is a preferred offeror?

51.29 How will I know when a preferred offeror exists?

51.30 What must a preferred offeror do before it may exercise a right of preference?

51.31 What happens if a preferred offeror does not submit a responsive proposal?

- 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?
- 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?
- 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?
- 51.35 What happens to a right of preference if the Director receives no responsive proposals?

Subpart F--Determining a Preferred Offeror

- 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?
- 51.37 How will the Director determine that a new concession contract is a qualified concession contract?
- 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?
- 51.39 What are some examples of outfitter and guide concession contracts?
- 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?
- 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?
- 51.42 Are there exceptions to this compensable interest prohibition?
- 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?
- 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?
- 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?
- 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?
- 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?
- 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?
- 51.49 May the Director grant a right of preference except in accordance with this part?
- 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

Subpart G--Leasehold Surrender Interest

- 51.51 What special terms must I know to understand leasehold surrender interest?
- 51.51 How do I obtain a leasehold surrender interest?
- 51.52 51.53 When may the Director authorize the construction of a capital improvement?
- 51.54 What must a concessioner do before beginning to construct a capital improvement?
- 51.55 What must a concessioner do after substantial completion of the capital improvement?
- 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?
- 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

- 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?
- 51.59 Will leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?
- 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?
- 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?
- 51.62 What is the process to determine a leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?
- 51.63 When a new concessioner pays a concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?
- 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?
- 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?
- 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?
- 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

Subpart H--Possessory Interest

- 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?
- 51.69 What happens if there is a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?
- 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?
- 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?
- 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

Subpart I--Concession Contract Provisions

- 51.73 What is the term of a concession contract?
- 51.74 When may a concession contract be terminated by the Director?
- 51.75 May the Director segment or split concession contracts?
- 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?
- 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?
- 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?
- 51.79 May the Director waive payment of a franchise fee or other payments?
- 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?
- 51.81 May the Director include "special account" provisions in concession contracts?

51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

51.83 Handicrafts. [Reserved]

Subpart J--Assignment or Encumbrance of Concession Contracts

51.84 What special terms must I know to understand this part?

51.85 What assignments require the approval of the Director?

51.86 What encumbrances require the approval of the Director?

51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

51.89 What happens if there is a default on an encumbrance approved by the Director?

51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

51.91 What information may the Director require in the application?

51.92 What are standard proformas?

51.93 If the transaction includes more than one concession contract, how must required information be provided?

51.94 What information will the Director consider when deciding to approve a transaction?

51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

Subpart K--Information and Access to Information

51.98 What records must the concessioner keep and what access does the Director have to records?

51.99 What access to concessioner records will the Comptroller General have?

51.100 When will the Director make proposals and evaluation documents publicly available?

Subpart L--The Effect of the 1998 Act's Repeal of the 1965 Act

51.101 Did the 1998 Act repeal the 1965 Act?

51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

51.103 Severability.

Subpart M-- Information Collection

51.104 Have information collection procedures been followed?

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq., particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

Subpart A--Authority and Purpose

§ 51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq. and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.) relating to revenue-producing visitor services.

§ 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

Subpart B--General Definitions

§ 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The 1965 Act means Public Law 89-249, commonly known as the National Park Service Concession Policies Act of 1965.

A 1965 Act concession contract is a concession contract or permit entered into under the authority of the 1965 Act.

The 1998 Act means Title IV of Public Law 105-391.

The award of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A concession contract (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 601 et seq. (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A concessioner is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A franchise fee is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A possessory interest concession contract means a 1965 Act concession contract that provides the concessioner a possessory interest.

A preferred offeror is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A qualified concession contract is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A qualified person is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A responsive proposal means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A right of preference is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

Subpart C--Solicitation, Selection and Award Procedures

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than eighteen months prior to the expiration of a related existing concession contract.

§ 51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

- (1) The minimum acceptable franchise fee or other forms of consideration to the Government;
- (2) The minimum visitor services that the concessioner is to be authorized to provide;
- (3) The minimum capital investment, if any, that the concessioner must make;
- (4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and
- (5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

§. 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

§ 51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

§ 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

§ 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

§ 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus--a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than \$100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

§ 51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

§ 51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

§ 51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

§ 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in § 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

§ 51.17 What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than \$100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

§ 51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

§ 51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

§ 51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

§ 51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

§ 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of \$5,000,000 or of more than 10 years in duration, or, pursuant to § 51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

Subpart D--Non-Competitive Award of Concession Contracts

§ 51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, e.g., the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

§ 51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, e.g., the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the **Federal Register** at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

§ 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the **Federal Register** at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

Subpart E--Right of Preference to a New Concession Contract

§ 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

§ 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

§ 51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

§ 51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

§ 51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

§ 51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

§ 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

§ 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

§ 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

§ 51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

Subpart F--Determining a Preferred Offeror

§ 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

- (a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;
- (b) The applicable new contract is a qualified concession contract as determined under this part; and
- (c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

§ 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

- (a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either
- (b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than \$500,000 in the first 12 months of its term; or
- (c) The new concession contract is an outfitter and guide concession contract as described in this part.

§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

- (a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and
- (b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

§ 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

- (a) The operations occur in areas remote from roads and developed areas;
 - (b) The operations are conducted within a designated natural area of a park area;
 - (c) The operations occur in areas that are inaccessible by motorized vehicle;
 - (d) The operations occur in areas where search and rescue support is not readily available;
- and
- (e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area

§ 51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

§ 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

§ 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

§ 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

§ 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period) May 17, 2000, the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

§ 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

§ 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

§ 51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

§ 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

Subpart G--Leasehold Surrender Interest

§ 51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term "construct" or "construction" as used in this part also means "install" or "installation" of fixtures where applicable.

Consumer Price Index means the national "Consumer Price Index--All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term "fixture" as used in this part includes the term "non-removable equipment."

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

- (1) The initial construction cost of the related capital improvement;
- (2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;
- (3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (e.g., where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or related fixture means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (e.g., water, power and sewer lines) and constructed site improvements (e.g., paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

§ 51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

§ 51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

§ 51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

§ 51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

§ 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time amend a construction cost determination (subject to arbitration under § 51.57) if the Director determines that it was based on false, misleading or incomplete information.

§ 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. If a timely request is not made, the Director's determination of construction cost under § 51.56 shall be the final determination of the construction cost. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

§ 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

- (a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;
- (b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and
- (c) May relinquish or waive a leasehold surrender interest.

§ 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.

§ 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

§ 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

§ 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for arbitration as to the leasehold surrender interest values upon request of the Director or the concessioner. The arbitration procedures are described in Section 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

§ 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

§ 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (e.g., a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

§ 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

§ 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (e.g., a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

§ 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

Subpart H--Possessory Interest

§ 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

§ 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

§ 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

§ 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

§ 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

Subpart I--Concession Contract Provisions

§ 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

§. 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

§ 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than \$500,000.

§ 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a “preferential right to new or additional services” means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

§ 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

§ 51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

§ 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

§ 51.81 May the Director include “special account” provisions in concession contracts?

(a) The Director may not include in concession contracts “special account” provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

§ 51.83 Handicrafts. [Reserved]

Subpart J--Assignment or Encumbrance of Concession Contracts

§ 51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A controlling interest in a concession contract means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A controlling interest in a concessioner means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A “controlling interest” in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner. The term “controlling interest” in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

§ 51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as “assignments” for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as “encumbrances” for purposes of this part), without the prior written approval of the Director, any of the following:

- (a) Any concession contract;
- (b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;
- (c) Any controlling interest in a concessioner or concession contract; or
- (d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

§ 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

§ 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

§ 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

§ 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

- (a) All instruments proposed to implement the transaction;
- (b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;
- (c) A narrative description of the proposed transaction;
- (d) A statement as to the existence and nature of any litigation relating to the proposed transaction;
- (e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;
- (f) A detailed description of all financial aspects of the proposed transaction;
- (g) Prospective financial statements (proformas);
- (h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and
- (i) Such other information as the Director may require to make the determinations required by this subpart.

§ 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

- (a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;
- (b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

§ 51.93 If the transaction includes more than one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

§ 51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

§ 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

§ 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

§ 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

Subpart K--Information and Access to Information

§ 51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

§ 51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

§ 51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

Subpart L--The Effect of the 1998 Act's Repeal of the 1965 Act

§ 51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

§ 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a “renewal preference” in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

§ 51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Subpart M--Information Collection

§ 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and assigned clearance number 1024-0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024-0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a **Federal Register** notice when OMB has approved these requirements.

Dated: April 10, 2000.
Stephen C. Saunders,
Acting Assistant Secretary for Fish and Wildlife and Parks.
[FR Doc. 00-9289 Filed 4-14-00; 8:45 am]
BILLING CODE 4310-70-P

36 CFR Part 51
TECHNICAL CORRECTIONS
EFFECTIVE DATE: September 7, 2000

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[**Federal Register:** September 7, 2000 (Volume 65, Number 174)]
[Rules and Regulations]
[Page 54155]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024-AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Technical corrections.

SUMMARY: This action makes technical corrections to regulations concerning the determination of a preferred offeror to correct a typographical error and to delete confusing and unnecessary provisions.

EFFECTIVE DATE: September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW., Washington, DC 20240 (202/565-1219).

SUPPLEMENTARY INFORMATION: The National Park Service published in final in the **Federal Register** on April 17, 2000 (65 FR 20630), an amendment to 36 CFR part 51 to reflect the changes in policies and procedures applicable to National Park Service concession contracts resulting from the passage of Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

Section 51.40(c) has been determined by the National Park Service to be confusing and unnecessary in light of the entirety of § 51.40. Specifically, § 51.40(c) has been misunderstood to suggest that in order for a portion of a park area to be determined "backcountry" for purposes of 36 CFR part 51, the area must be inaccessible by motorized vehicle.

36 CFR Part 51
TECHNICAL CORRECTIONS
EFFECTIVE DATE: September 7, 2000

This is not the meaning of § 51.40. Rather, the section is intended to mean that the accessibility of a portion of a park area to motorized vehicles is only one consideration that may be taken into account in determining the existence of "backcountry" for purposes of determining which concession contracts are outfitter and guide contracts under 36 CFR part 51. As stated in § 51.40, determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area are made on a park-by-park basis, taking into account the park area's particular geographic circumstances. Accessibility of an area by motorized vehicles is only a possible consideration in this determination.

In order to correct the confusion caused by § 51.40(c), the National Park Service has determined to delete 36 CFR 51.40(c) as confusing and unnecessary. The overall intentions of § 51.40 remain the same with the deletion of § 51.40(c), as § 51.40(a) continues to provide that remoteness from roads and developed areas is a possible factor in determining "backcountry" for purposes of 36 CFR part 51.

In addition, § 51.46 of the final regulation contains a typographical error, the inadvertent inclusion of the date "May 17, 2000," in its text.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

Accordingly, 36 CFR part 51 is corrected by making the following correcting amendments:

PART 51--CONCESSION CONTRACTS

1. The authority citation for part 51 continues to read as follows:

Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 et seq., particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105-391).

§ 51.40 [Amended]

2. In § 51.40, paragraph (c) is removed.
3. In § 51.40, paragraphs (d) and (e) are redesignated as paragraphs (c) and (d).
4. In § 51.46, the last sentence is corrected by removing the date "May 17, 2000".

Dated: August 30, 2000.

Cynthia Orlando,
Acting Associate Director, Park Operations and Education.
[FR Doc. 00-22859 Filed 9-6-00; 8:45 am]
BILLING CODE 4310-70-P

VISITATION STATISTICS

OCCUPANCY RATE SUMMARY
Crater Lake National Park

<u>MAZAMA MOTOR INN</u>	<u># GUESTS</u>	<u>% ROOMS SOLD</u>
1997: June	1804	69.20%
July	3268	99.92%
August	3239	100.00%
September	2300	92.25%
October	167	18.64%
Total/Avg.	10,778	85.16%
1998: June	1475	54.42%
July	3239	100.00%
August	3108	99.03%
September	2287	90.83%
October	333	41.25%
Total/Avg.	10,442	83.22%
1999: June	1279	40.42%
July	3309	99.84%
August	3186	99.68%
September	2380	93.25%
October	386	45.25%
Total/Avg.	10,540	83.57%

<u>CRATER LAKE LODGE</u>	<u># GUESTS</u>	<u>% ROOMS SOLD</u>
1997: May	1466	69.48%
June	4456	90.89%
July	5135	99.95%
August	5063	99.95%
September	4400	99.58%
October	2248	80.72%
Total/Avg.	22,942	92.95%
1998: May	1360	72.42%
June	4681	93.10%
July	5231	100.00%
August	5140	99.95%
September	4568	100.00%
October	2603	89.01%
Total/Avg.	22,223	95.07%
1999: May	373	56.22%
June	4133	86.15%
July	5163	100.00%
August	5255	100.00%
September	4531	100.00%
October	1420	89.01%
Total/Avg.	20,875	92.46%

<u>CAMPGROUND OCCUPANCY</u>	<u># GUESTS</u>	<u>% SITES SOLD</u>
1997: June	3940	51.37%
July	14,156	83.20%
August	15,258	89.09%
September	4411	49.89%
October	386	18.39%
Total/Avg.	38,151	72.27%
1998: June	898	81.88%
July	11,391	75.54%
August	13,510	81.32%
September	5545	57.86%
October	515	47.59%
Total/Avg.	31,859	72.85%
1999: June	-	-
July	9575	69.32%
August	13,587	74.55%
September	6015	62.12%
October	82	49.40%
Total/Avg.	29,259	69.37%

<u>BOAT OCCUPANCY</u>	<u># SOLD</u>	<u>% OF AVAILABLE SOLD</u>
1996: June	705	73.44%
July	10,206	77.67%
August	12,210	74.54%
September	2400	66.67%
Total/Avg.	25,521	74.89%
1997: June	374	77.92%
July	9758	75.29%
August	12,719	85.19%
September	2299	67.22%
Total/Avg.	25,150	79.26%
1998: (In 1998 there were no boat tours due to the construction of a new fuel storage and delivery system)		
1999: June		
July	2797	92.71%
August	10,992	85.75%
September	3435	72.29%
October		%
Total/Avg.	17,224	83.46%

VISITOR SERVICES PLAN